



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4091

DATE FILMED 5-5-97 CAMERA NO. 4

CAMERAMAN JMN

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U.S. Department of Justice

Justice

0607789

United States Attorney
District of Massachusetts

1107 J.W. McCormack Post Office and Courthouse
Boston, Massachusetts 02109

November 30, 1992

21000-3 11/4/92

Joan D. Aikens
Chairman, Federal Election Commission
999 E St., NW
Washington, DC 20463

Dear Chairman Aikens:

I am writing to you at the request and suggestion of Craig Donsanto to request that you designate an appropriate individual at your office who could provide this office and the I.R.S. with the results of the audit presently being conducted of the Presidential campaign committee of Paul Tsongas. Obtaining the audit results directly from the Commission would greatly facilitate an ongoing investigation in this district and avoid unnecessary duplication of effort.

This office and the I.R.S. are investigating the conduct of the campaign treasurer, and perhaps others, for a variety of alleged acts of misconduct including double billing the campaign, causing false reports to be filed and embezzling funds from the campaign treasury. These are serious and substantial allegations and, if proven, would constitute violations of Title 26 (tax crimes), Title 18 U.S.C. 1001 (false statements), Title 18 U.S.C. 1962 (RICO), Title 18 U.S.C. 1341 (mail fraud), Title 18 U.S.C. 1956 (money laundering) and perhaps other federal offenses.

Thank you for your cooperation in this important matter. If you have any questions please contact me or Assistant United States Attorney Joseph F. Savage, Jr. at (617) 223-9423.

Sincerely yours,

A. JOHN PAPPALARDO
United States Attorney

cc: Craig Donsanto

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1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

3 Criminal Action
4 No. 93-10056-T

TPURC, D.J.

(MUR 3585)

5 UNITED STATES OF AMERICA

6
7 v.

8 NICHOLAS A. RIZZO, JR.

9
10 (Change of Plea and Disposition Hearing)

11 APPEARANCES:

12 UNITED STATES ATTORNEY'S OFFICE (By AUSA Brien T.
13 O'Connor and AUSA Joseph Savage) 1007 U.S. Post Office &
14 Courthouse, Boston, MA, 02109, On behalf of the United
States of America.

15 MANZI and McCANN (By Eugene Patrick McCann, Esquire and
16 Vincent C. Manzi, Jr., Esquire) 59 Jackson Street,
17 Lawrence, MA 01840-1624, On behalf of Nicholas A. Rizzo,
Jr..

18 Courtroom No. 2
19 U.S.P.O. & Courthouse
20 Boston, MA, 02109
21 October 13, 1993
22 3:30 p.m.

23 James P. Gibbons
24 Federal Court Reporter
25 2004 U.S.P.O. & Courthouse
Boston, MA, 02109 (617) 426-8716
Mechanical Steno - Transcript by Computer

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PROCEEDINGS

1
2 THE CLERK: United States vs. Nicholas Rizzo,
3 Criminal Action No. 93-10056.

4 THE COURT: Good afternoon. Let me see
5 counsel up here for just a minute.

6 (Conference at the bench between Court and
7 counsel as follows:

8 THE COURT: What I want to know is is this
9 plea agreement a binding one, or is it one you agreed to and
10 accepted and I accept, or there is going to be a trial?

11 MR. McCANN: That's correct.

12 MR. O'CONNOR: It is binding.

13 THE COURT: The parties themselves have
14 agreed on the guideline range as 26?

15 MR. O'CONNOR: 24, your Honor.

16 THE COURT: The Probation Department
17 disagrees?

18 MR. O'CONNOR: That's correct.

19 ...end of conference at the bench.)

20 THE COURT: Good afternoon, everybody. We
21 are here for change of plea and for disposition: is that
22 correct?

23 MR. McCANN: That's correct.

24 MR. O'CONNOR: That's right.

25 THE COURT: Please identify yourselves for

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1 the record?

2 MR. McCANN: Good afternoon, your Honor.
3 Eugene Patrick McCann and Vincent Manzi are here for
4 Mr. Rizzo.

5 MR. O'CONNOR: Yes, your Honor. Brien
6 O'Connor and Joseph Savage for the United States Attorney's
7 Office. Raymond Capece from the IRS-CID and Jack DeCourcy of
8 the FBI are at counsel table with me and Mr. Savage.

9 THE COURT: Now, is Mr. Rizzo prepared to
10 have me make inquiry of him?

11 MR. McCANN: Yes, he is, your Honor. At this
12 time he is prepared to change his plea from not guilty to
13 guilty to a series of counts.

14 THE COURT: He is prepared to have me make
15 inquiry of him?

16 MR. McCANN: That's correct, your Honor.
17 (Pause.)

18 THE COURT: Okay, Mr. Rizzo. I am going to
19 go over a number of matters with you. I am going to ask you
20 several questions. If there is anything that I say to you
21 that you do not understand or any question that you do not
22 understand, let me know and I will try to make myself clear.
23 If you want to stop at any time and consult with your lawyer,
24 let me know that and I will permit you to do that.

25 All right?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Try to keep your voice up so the
3 court reporter can take down what you say.

4 The first thing is I want to make sure you know what
5 you are charged with. As I understand it, you are going to
6 be pleading guilty to Counts 1, 2, 3, 6 and 8, which charge
7 you with mail fraud. Those counts ordinarily carry with them
8 the possibility of five years in jail and a \$250,000 fine.

9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Count 9 charges you with money
12 laundering.

13 Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: And that ordinarily constitutes a
16 20 year or \$250,000 fine, or gross value of the property
17 involved in the transaction.

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Counts 19 through 33 involve
21 allegations of violating campaign donation and loan limits.

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And those charges each carry
25 potentially five years and a \$250,000 fine.

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Do you understand that?

THE DEFENDANT: Yes.

MR. O'CONNOR: Your Honor, if I may, I think those counts -- I just have a correction. Those are Title 2 counts and they are misdemeanors. And I did mention that to the probation officer ahead of time. It's a one-year maximum, and \$25,000 or 300 percent of the amount of the unlawful contributions for a fine.

THE COURT: That is 19 through 33?

MR. O'CONNOR: That's correct, your Honor. And the other thing is that for money laundering the statute calls for 500,000, or two times, as the Court said.

THE COURT: Okay, fine. Thank you very much for the corrections.

Do you understand those corrections?

THE DEFENDANT: Yes.

THE COURT: Then Counts 34, 35, 36 and 37 involved false statements, which carry a potential of five years in jail and/or a \$250,000 fine on each.

Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: And Count 38 deals with forfeiture.

Do you understand that?

THE DEFENDANT: Yes, your Honor.

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THE COURT: Okay. Now, there are a number of other things I want you to understand, at least I want to make sure you understand.

The first is that you have a number of important rights under our Constitution. One of the most important of your rights is your right under the Fifth Amendment not to incriminate yourself. And what this means for your purposes here this afternoon is that no one can force you to say something and then finding out what you had to say is used against you in a way that might cause you some punishment, either by fines or by incarceration.

Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: You have a right to remain silent, rather than to speak and find out what you had to say caused you to be exposed to some punishment.

Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: I want you to appreciate that, if you plead guilty here this afternoon, as a practical matter you will be waiving that important constitutional protection, because, if you utter the word "guilty," you are exposing yourself to the possibility of a substantial jail term and a substantial fine, not to mention forfeiture, in this case.

Do you understand that?

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THE DEFENDANT: Yes, your Honor.

THE COURT: I also want you to understand that you are accused of having committed these several crimes, but you are presumed to be innocent. And what this means is that you do not have to come to court prepared to convince anybody that you did not commit the crimes alleged in this indictment. To the contrary, the government has to come to court with sufficient evidence that would satisfy a jury selected at random, sworn to be impartial, of your guilt beyond a reasonable doubt, which means to a certainty, and the jury would have to make that finding unanimously. That means that each juror would have to agree with it.

Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: In order for the government to meet that heavy burden of proof, that is, establishing your guilt beyond a reasonable doubt, there would have to be a trial here in open court, during which you would be represented by counsel. And your lawyer would have the opportunity to try to tear down the government's case against you either by cross-examining witnesses, by presenting evidence on your behalf. You could take the witness stand yourself if you wanted to and testify to give your version of events, although no one could make you testify.

I want you to understand that these are among the

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1 many opportunities that attach to a trial and, if you plead
2 guilty here today, that these opportunities would be lost to
3 you forever. If you plead guilty, the government, of course,
4 will no longer have the burden of proof of convincing anyone
5 of your guilt. You will concede that. And the only thing
6 that will remain in the case is for me to sentence you.

7 Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand the
10 opportunities that attach to a trial as I explained them to
11 you?

12 THE DEFENDANT: Yes.

13 THE COURT: And that those opportunities are
14 lost to you forever if you plead guilty today?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: I also want you to understand
17 that, if you plead guilty here this afternoon, I may ask you
18 some questions about these offenses; and, if I do, your
19 answers to me must be truthful, otherwise you will be facing
20 a possibility of being accused of having committed perjury or
21 having made a false statement to the Court. If I ask you
22 some questions, you have to give me straight answers,
23 otherwise you will be in more trouble.

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: I have submitted to me a plea
2 agreement, which I am free to accept or reject; and, if I
3 accept it, that will be the sentence in the case. If I
4 reject it, I will permit you to withdraw your plea and you
5 will stand ready for trial.

6 Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: There are two agreements that I
9 have that, I take it, constitute the entire agreement. One
10 is dated August 24, 1993; the other, October 13, 1993.

11 Everybody recognizes these as the applicable
12 documents?

13 MR. O'CONNOR: Yes, your Honor.

14 MR. McCANN: That's correct, your Honor.

15 THE COURT: They will be marked as court
16 exhibits in this case.

17 Have you had anything to eat or drink today that
18 might in any way affect your ability to think normally?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Any medication?

21 THE DEFENDANT: None that would affect my
22 thinking.

23 THE COURT: Any liquor, anything like that?

24 THE DEFENDANT: No.

25 THE COURT: Do you feel you know what you are

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1 doing?

2 THE DEFENDANT: Yes.

3 THE CLERK: Nicholas A. Rizzo, Jr., a United
4 States grand jury has charged you in Counts 1, 2, 6 and 8
5 with mail fraud; in Count 9 with money laundering; in Counts
6 19 through 33 with violating campaign donation and loan
7 limits; in Counts 34, 35, 36 and 44 with false statements;
8 and Count 48 with criminal forfeiture.

9 How do you plead to Counts 1, 2, 3, 6, 8, 9, 19
10 through 33, 34, 35, 36, 44 and 48?

11 THE DEFENDANT: Guilty.

12 THE COURT: Has anybody threatened you in any
13 way to get you to plead guilty?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Has anybody promised you
16 anything other than the plea agreement that you have entered
17 into with the government to get you to plead guilty?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: Did you, in fact, on the
20 occasions stated in the indictment commit the various
21 violations that are alleged?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: And you knew that you were
24 violating the law?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Counsel, on the basis of your
2 pretrial preparation, do you know of any reason why your
3 client should not plead guilty?

4 MR. McCANN: No, your Honor, I do not.

5 THE COURT: Okay.

6 Mr. O'Connor, may we have the basis in fact?

7 MR. O'CONNOR: Thank you, your Honor.

8 Your Honor, in this case the facts begin in early
9 1991. Prior to that time, Mr. Rizzo had acted as Paul
10 Tsongas' chief fundraiser in the 1974 and '76 congressional
11 campaigns and his 1978 senatorial campaign.

12 Mr. Rizzo had also acted as the national fundraising
13 chairman for Jimmy Carter's 1980 presidential campaign;
14 Walter Mondale's '84 campaign; and also for numerous other
15 campaigns, your Honor, where Mr. Rizzo demonstrated an
16 ability to raise massive amounts of funding for political
17 campaigns.

18 His closest political alliance and a very close
19 friendship was formed during the 1970s with Paul Tsongas.
20 During that time Mr. Tsongas, of course, was the candidate.
21 Mr. Rizzo handled all of the fundraising for the Tsongas
22 campaign, and Dennis Kanin was the organizer or campaign
23 manager of Mr. Tsongas' campaign.

24 Your Honor, in March of 1991, Mr. Tsongas approached
25 Mr. Rizzo after Mr. Tsongas had been out of politics for

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1 approximately a decade and informed him that he wanted to run
2 for the White House, and he asked Mr. Rizzo to play the
3 customary role of fundraiser for the campaign. He explained
4 to Mr. Rizzo that Dennis Kanin again would be the campaign
5 manager and run the mechanics, the day to day, of the
6 campaign, and he asked Mr. Rizzo to play the fundraising
7 role.

8 At that time, Mr. Tsongas told Mr. Rizzo that he had
9 written a book, "A Call to Economic Arms," and that he
10 needed, first and foremost, to get funding to publish the
11 book, to copy it and to distribute it as the beginning of his
12 campaign. Mr. Rizzo acquiesced and told Mr. Tsongas that he
13 would act as his fundraising chairman; and he also had a
14 suggestion for Mr. Tsongas as to where money could come for
15 the initial publishing and funding of the book; and that is
16 from Mr. Larry Ansin, who at the time was chairman of Jo-Ann
17 Fabrics and a close friend of Mr. Tsongas.

18 Mr. Rizzo told Mr. Tsongas that Ansin could come up
19 with some money and basically left it at that; and Tsongas
20 and Kanin left it to Mr. Rizzo to get whatever money he could
21 from Mr. Ansin to fund the book.

22 Now, your Honor, there's one point. This funding
23 was, in effect, an exploratory loan. And at the time that it
24 was made, it was a legal loan if it was repaid before the
25 campaign actually started its official operation. But, in

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1 any event, Mr. Rizzo took the \$100,000 from Mr. Ansin, and
2 with that money, unbeknownst to Mr. Kanin or Mr. Tsongas,
3 went and opened an account on March 8th of 1991 at the
4 Andover Savings Bank. Mr. Rizzo opened the account using his
5 own identification number, but opened it under the name of
6 the Tsongas Committee.

7 Three days later, by resolution, the Tsongas
8 Committee opened its own account, the operating account for
9 the campaign, at BayBank, and that was on March 11th of 1991.
10 On that authorized official account, Mr. Rizzo did not have
11 signatory authority. On the undisclosed account, and the
12 account remained undisclosed for more than a year, but on the
13 undisclosed account Mr. Rizzo was the only signatory.

14 Shortly after Rizzo began his fundraising
15 activities, checks were flowing into the campaign Post Office
16 box account in Andover. They were coming in amounts from \$10
17 to a thousand dollars, the maximum that any individual can
18 give to a federal political campaign. Mr. Rizzo had access
19 to that box.

20 During 1991 Mr. Rizzo took \$181,000 worth of
21 contributions from that box; and, instead of forwarding them
22 on to the campaign individuals -- the business manager, David
23 Goldman in Boston; the treasurer, George Kokinos; or others
24 -- he took \$181,000 and put it in the undisclosed account.

25 Between the time he started doing that in March of

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1 1991 and January of 1992. Mr. Rizzo spent all of that money.
2 \$155,000 of the money that he spent he spent on himself and
3 on his own personal expense. \$26,000 he, in fact, used on
4 things that were, at least arguably, campaign related.

5 That's one aspect of the case, your Honor, the
6 \$181,000 embezzlement of the campaign contributions.

7 Now, as a result of his taking that money, in
8 effect depriving the campaign of \$155,000, he also deprived
9 the campaign of the money, the matching funds, that it was
10 otherwise entitled to received if it had known about the
11 money from the FEC in Washington. The campaign has submitted
12 a victim impact report. They estimate that the campaign lost
13 about another \$75,000 in matching funds during that critical
14 period of mid to late 1991 into 1992.

15 Your Honor, the second aspect of Mr. Rizzo's fraud
16 involved so-called loaners to the campaign.

17 Now, as the Court knows, individuals cannot give
18 more than a thousand dollars, and they also can't loan more
19 than a thousand dollars to a federal campaign.

20 Now, I mentioned earlier that Mr. Ansin's \$100,000
21 loan -- again, unknown to the candidate, unknown to Dennis
22 Kanin, unknown to anyone else involved in the Committee --
23 was put in the account. That loan would have been legal if
24 it had been paid back before the campaign started. What
25 actually happened to the money is that Mr. Rizzo spent the

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1 \$100,000 on his own personal expenses. None of it went to
2 the publishing, copying or distribution of "A Call to
3 Economic Arms." All of the money was spent by January of
4 1992.

5 The second so-called loaner was Elkin McCallum, who
6 became the chief executive officer and majority shareholder
7 of Jo-Ann Fabrics during 1991. Mr. Rizzo went to
8 Mr. McCallum, who was a Tsongas supporter, in August of 1991
9 and told him that the campaign desperately needed money to
10 get on TV and get on radio. McCallum voiced his concern to
11 Rizzo that a large loan, in his opinion, as far as he knew,
12 was not legal. He also told Mr. Rizzo that he wouldn't want
13 anyone to know that he had that kind of money to give,
14 because people would be badgering him for more money.

15 Mr. Rizzo persuaded Mr. McCallum that the loan was
16 legal, because it was an exploratory loan. He told him that
17 Mr. Tsongas and Mr. Fanin knew about the loan, and that it
18 was fine with them, and he also told him that the money would
19 be paid back in a short time period. In fact, Mr. Rizzo took
20 a \$100,000 check from Mr. McCallum, put it in the undisclosed
21 account, and spent it on his own personal expenses, in a way
22 that I will tell the Court about in a moment, by January of
23 1992.

24 In October he came back to Mr. McCallum, and he told
25 McCallum that, again, the campaign was desperate for money,

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1 that Tsongas needed the money to stay on the airwaves. At
2 that time McCallum -- he again assured McCallum that Tsongas
3 and Kanin knew about the money that he was seeking --
4 McCallum gave him another \$50,000, again, payable to the
5 Tsongas Committee, and therefore, depositable or capable of
6 being deposited in the undisclosed account at the Andover
7 bank. He put the money in there and again spent that money
8 by January of 1992.

9 Finally, with respect to Mr. McCallum, in February
10 of 1992, even after Mr. Rizzo was approached for the first
11 time by Dennis Kanin about apparent problems with his
12 handling of money, Mr. Rizzo goes back to Mr. McCallum and he
13 tells him again, "The New Hampshire primary is coming. We've
14 got to be on the airwaves, but you've reached your limit in
15 giving to the exploratory account. So, therefore, this time
16 you have to write the check to me so that I can then give it
17 to the campaign, because I haven't reached my limit yet."
18 Mr. McCallum wrote another \$100,000, this time to Mr. Rizzo.
19 Mr. Rizzo took that money, put it in his personal account at
20 BayBank Middlesex, and spent the money over the following
21 months.

22 Following this last -- it is now a quarter of a
23 million dollars that he's defrauded Mr. McCallum -- the last
24 \$100,000 payment, Mr. McCallum chased Mr. Rizzo repeatedly
25 for the money. Mr. Rizzo gave him a back-dated promissory

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1 note to keep him off his back. In April he told him that he
2 had liver cancer; something, your Honor, that apparently is
3 not borne out by the presentence investigation.

4 The next loaner, your Honor, so-called loaner, was
5 Anastasios Kalogianis, a Greek immigrant who had known the
6 Tsongas family for several years. Mr. Kalogianis is the
7 owner and operator of the Olympic Construction Company up in
8 Andover.

9 Mr. Rizzo went to him in the fall of 1993 and asked
10 him for a loan to the campaign to support Paul Tsongas. He
11 explained -- when Mr. Kalogianis said, "That's not legal," he
12 explained that the money could be given to a superfund
13 account to fund Tsongas' campaign. Kalogianis, knowing
14 Rizzo, knowing that he'd been involved in presidential
15 politics for years and had a good reputation, acquiesced to
16 his request; and from September to December he gave him five
17 checks, when Rizzo repeatedly badgered him for more money.
18 He gave him \$10,000 on September 10th; 25,000 on
19 September 25; \$24,000 on October 2; December 5, \$35,000;
20 December 6, \$65,000; for a total of \$149,000 by the year's
21 end.

22 Mr. Rizzo again took those checks that were made
23 payable to the Committee, put them in the undisclosed
24 account, and spent them on his personal expenses by January
25 of 1992.

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1 Early in 1992 -- again, that's the time the campaign
2 first confronted Mr. Rizzo -- Rizzo comes back to Kalogianis,
3 and this time he says to Kalogianis that the campaign has
4 already arranged TV time costing \$100,000 for the New
5 Hampshire primary. He tells Kalogianis that a bank has
6 agreed to give that money but can't release the funds for 24
7 hours and begs Kalogianis to give the \$100,000 saying that,
8 if he doesn't and the check bounces, the TVs will publish
9 that, so to speak, and the campaign will be ruined.

10 Kalogianis reluctantly again gives Rizzo \$100,000, this time
11 payable to Nicholas Rizzo. Rizzo takes it, puts it in his
12 BayBank account, and spends it on his own personal expenses
13 over the coming months.

14 During the next few months, Kalogianis daily chased
15 Mr. Rizzo to get the money back. Rizzo had promised that the
16 money from 1991 would be repaid by the year's end. He said
17 24 hours for the next \$100,000. He's now up to \$249,000.
18 Mr. Rizzo, as part of the scheme, put off Mr. Kalogianis in
19 several different ways:

20 One, he prints a letter, ostensibly from Paul
21 Tsongas, thanking Mr. Kalogianis for his undying support and
22 for his critical help during a tough time in the campaign.

23 Mr. Rizzo arranges for Mr. Kalogianis to fly in a
24 private jet to Washington to watch a presidential debate that
25 Mr. Tsongas participated in.

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1 Finally, after the New Hampshire primary, Mr. Rizzo
2 told Mr. Kalogianis a story, again, to keep him off his back.
3 The story was as follows: Rizzo said that following the New
4 Haapshire primary victory of Paul Tsongas in early 1992 --
5 first, Rizzo explains to Kalogianis that, whenever a
6 candidate wins a primary or any election, he names the win
7 after a certain individual. Rizzo says that he was there at
8 the time that Paul Tsongas told reporters, in light of the
9 New Haapshire victory, that New Hampshire he was now naming
10 "Arthur," Arthur Anastasios Kalogianis.

11 None of the money, the \$250,000 from McCallum, the
12 249 from Kalogianis, has been repaid by Mr. Rizzo.

13 Roger Trudeau was the next loaner. In August of
14 1991, Mr. Rizzo went to Mr. Trudeau, met with him and told
15 him again that Tsongas needed money to stay competitive, that
16 Bill Clinton was raising enormous amounts of money; and that,
17 if Tsongas hoped to have any chance, friends like Trudeau had
18 to come through.

19 Trudeau was a long-time Tsongas friend. He is a
20 political activist. He agreed to give to Rizzo for Tsongas a
21 \$60,000 loan. To do that, he took \$40,000 of savings; he
22 borrowed \$20,000 from his employer; and he gave it to Rizzo
23 on the promise that it would be repaid shortly.

24 Later, September 10, Mr. Rizzo comes back and again
25 tells Trudeau that he needed more money for Tsongas.

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1 Trudeau, eager to do anything that he could do to help,
2 borrowed up to the limit of his 401K retirement plan; put all
3 his credit cards up to their maximums, your Honor; put his
4 stocks on margin; and got another \$20,000 to give to
5 Mr. Rizzo for Tsongas.

6 All of that money, \$80,000 that Rizzo had Trudeau
7 write over to Benco, the name of Rizzo's consulting company,
8 was spent by Rizzo, again, on his own personal expenses and
9 the expenses of the business that he owned solely, Benco
10 Consulting.

11 Thomas Kelley was the next loaner victim. Thomas
12 Kelley was the general manager of the Sheraton in Portsmouth,
13 New Hampshire. Mr. Rizzo went to a man named Steven
14 Griswold, who owned the Sheraton, looking for money.
15 Griswold directed him to Thomas Kelley, the general manager.
16 Rizzo went to Kelley and asked him again for \$40,000 -- this
17 is in the fall of 1991 -- telling him that Tsongas needed the
18 money, again, to be a contender, to be on the airwaves, TV
19 and radio.

20 Kelley didn't have \$40,000. He was a young man. He
21 had savings of about \$30,000. He continued discussing with
22 Mr. Rizzo -- he told Mr. Rizzo that his father had gotten
23 cancer at the same time that Mr. Tsongas had got cancer, but
24 that his father had died, whereas Mr. Tsongas had beaten the
25 cancer. And Mr. Rizzo played on that angle, on the fact that

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1 Kelley's father had been a big Tsongas supporter; and
2 ultimately Kelley gave him \$25,000, again payable to the
3 Tsongas Committee, on the promise that it would be repaid
4 within 45 to 60 days.

5 Mr. Rizzo took that check, like the others, and put
6 it in the undisclosed account. Thereafter he spent the
7 money, again, on his own personal expenses.

8 In the fall -- by the fall of 1992, Mr. Rizzo was
9 again putting off Kelley, like others, with his story that he
10 had contracted cancer and was not able to comply with the
11 obligations that he apparently had taken on for the
12 Committee.

13 Your Honor, a few more loaners -- and I won't go
14 into great detail -- but William Berg loaned \$60,000 to
15 Mr. Rizzo for the Tsongas campaign, again, on the
16 representation that it was legal, that it would be repaid
17 shortly, and that Mr. Tsongas knew about it. Mr. Rizzo took
18 that money, put it in the undisclosed account, and expended
19 it, again, on himself.

20 Peter Calcyeras, a long-time friend from California
21 of Mr. Tsongas, was persuaded on the representations, again,
22 that the loan was legal, that it would be repaid shortly, to
23 give \$10,000 to the campaign. Mr. Rizzo took that money, put
24 it in the account, and expended it on his own personal
25 expenses.

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1 Michael Spinelli, finally, a \$20,000 loan, again, on
2 the same kinds of misrepresentations. your Honor, by
3 Mr. Rizzo, gave a \$20,000 check payable to the Committee to
4 Rizzo. Rizzo put it in the account and spent it on himself.

5 In that aspect of the case, your Honor, Mr. Rizzo
6 defrauded by grossly misrepresenting facts, all for his own
7 personal benefit, but defrauded individuals of \$794,000. To
8 date, of that money, \$65,000 has been repaid: \$30,000 to
9 William Berg, who was a business associate of Mr. Rizzo;
10 \$15,000 to Mr. Trudeau; and \$20,000 to Michael Spinelli.

11 Your Honor, the last part of the fraud in the case
12 has to do with so-called double billing or billing for
13 personal expenses.

14 In January of 1992, Mr. Rizzo's daughter, Carla
15 Degnan, was working for the Committee, and she did have
16 signatory authority on the main operating Tsongas Committee
17 account. Mr. Rizzo induced his daughter to write a check to
18 him in the amount of \$42,000 for expenses that Rizzo just
19 generally said he had incurred in working for the Committee.
20 He took that money and he deposited it in a Benco account,
21 fooled with the books, showing that the money had come in
22 from legitimate clients of Benco, and attempted to get away
23 with the \$42,000 fraud in that way. The campaign called him
24 on it about a month later. Dennis Kanin and David Goldman
25 sat down with him. Mr. Rizzo returned the \$42,000.

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1 The remaining \$35,000 that was part of the so-called
2 campaign fraud had to do with Mr. Rizzo billing the campaign
3 for expenses that already had been repaid to him. For
4 example, in early 1991, a \$13,000 expense was incurred at the
5 Lafayette Hotel for a fundraiser here in Boston. The debt
6 was paid right away. In February of 1992 Mr. Rizzo submitted
7 a receipt as part of a whole package of receipts, seeking to
8 get \$13,000 to him as if he had paid that bill at some time
9 during the campaign.

10 Your Honor, again, the total on the double billings,
11 the billing for personal expenses, et cetera, was \$72,000.

12 Your Honor, a few words about Mr. Rizzo's coverup
13 with the Committee's discovery of the fraud.

14 Your Honor, in the fall of 1991, certain
15 individuals, who had contributed to the campaign in amounts
16 ranging from ten to a thousand dollars, were complaining to
17 the campaign that they had not received "thank you's" from
18 the campaign for their contributions. That was the first
19 sign of what was going on.

20 In January of 1991, it was brought to Dennis Kanin's
21 attention that a Mary Wasserman had donated a thousand
22 dollars in a thousand dollar check to the campaign and she
23 had not received a thank you. Kanin looked into it, and
24 found on the back of the Wasserman check the information that
25 we all get on the back of our checks when they're cashed; and

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1 that is, what bank the check was cashed at. And he saw for
2 the first time that the check was not cashed at the BayBank
3 Tsongas Committee account, but was cashed at an account at
4 the Andover bank in Andover where Mr. Rizzo lived.

5 At that time Mr. Kanin confronted Mr. Rizzo on the
6 telephone and told him what he had discovered and asked him
7 if he had any idea how the check could have gotten into the
8 Andover bank account. Rizzo denied knowing anything
9 initially as to how that could have happened. Then Rizzo
10 said that way back when, in March of 1991, "Remember that
11 loan Larry Ansin was going to give, I took that money and I
12 opened an account at the Andover bank. And, oh, yeah, I
13 might have put a couple of checks by mistake in that account
14 along with the Ansin loan."

15 Kanin immediately, on behalf of the Committee, hired
16 Michael Kail from Washington and Tony Sutin, an FEC expert
17 from Washington, to investigate what was going on. Those two
18 men, Kail and Sutin, along with members of the Committee,
19 spent the next three or four months pushing Rizzo for
20 documentation on the account in the Andover bank. Rizzo put
21 them off time and time again. It was not until late May or
22 early June that George Kokinos, the treasurer of the
23 campaign, was able to get the Andover bank to send him bank
24 statements from that account without Rizzo's okay, without
25 the only signatory's okay. And on the statements Kanin, to

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1 his surprise, to his shock, saw the \$250,000 money from
2 McCallum, the 249 from Kalogianis, and the other large
3 amounts, as well as what looked to be like a lot of campaign
4 contributions in smaller amounts.

5 Your Honor, it's worth noting that it was after that
6 point in January when Kanin confronted Rizzo that Rizzo
7 continued to push and got actually another \$200,000: a
8 hundred from Kalogianis and a hundred from McCallum.

9 Your Honor, during the spring and early summer of
10 1992, Rizzo sent out backdated promissory notes to his
11 victims. He even sent one victim, Kalogianis, three checks
12 totaling \$249,000; told him not to cash them until September.
13 When Kalogianis tried to cash them, he found that there was
14 no money in the account.

15 In July of 1992, when all of the information was
16 surfacing, Paul Tsongas and Dennis Kanin went to Mr. Rizzo's
17 office in Andover to confront him finally about the
18 situation. Mr. Tsongas asked him simply, "How could it have
19 happened?" And Rizzo explained that he was in deep debt;
20 that he had received loans, personal loans, from friends and
21 large loans from banks during the 1980s and early 1990s, from
22 friends at banks; and that he didn't want to let them down
23 and he had to pay them back; and that the reason that he took
24 the money was because he didn't want to leave his friends
25 hanging out on a limb. He said that once he started taking

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1 he just couldn't stop.

2 Tsongas asked him: What about Tsongas' friends, the
3 ones that were defrauded of the \$794,000, and what about his
4 presidential mission? What about what the campaign was all
5 about?

6 Rizzo simply said that he was sorry that the matter
7 had come to this, that the loans were his responsibility, and
8 that he would pay them back. Since that time Mr. Rizzo and
9 Mr. Tsongas have spoken only on a few occasions.

10 What happened to the money that Mr. Rizzo took?
11 Your Honor, the \$181,000, as I said, went to the undisclosed
12 account, \$514,000 of the \$794,000 that he defrauded from the
13 loaners went into the undisclosed account. The \$42,000 that
14 he got from his daughter and the \$80,000 that he got from
15 Mr. Trudeau went into Mr. Rizzo's Benco consulting account.
16 The final \$200,000 that Mr. Rizzo got from Kalogianis and
17 McCallum went into Rizzo's personal BayBank account.

18 Your Honor, where the money went from there gives us
19 some idea of what Mr. Rizzo did with the money. Your Honor,
20 as I have mentioned, in the late 1980s - early 1990s,
21 Mr. Rizzo took out substantial loans, personal unsecured
22 loans, from approximately ten different banks in
23 Massachusetts. The loans totaled about three million
24 dollars. Mr. Rizzo was having trouble paying those monies
25 back.

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1 We see going out of the undisclosed account \$50,000
2 to those banks. We see 483,500 going to Rizzo personally.
3 He then took that money, put it into his personal account,
4 and sent the banks \$400,000 approximately in satisfaction of
5 previously taken out loans.

6 From the undisclosed account, Mr. Rizzo wrote checks
7 to Benco, his company, in the amount of \$137,000. And then
8 he sent various amounts to others friends to satisfy other
9 personal debts.

10 From the BayBank account, his personal account, he
11 wrote checks either on miscellaneous personal expenses or to
12 himself in the approximate amount of \$369,000. He paid
13 Massachusetts-area bookies approximately \$38,150. He paid
14 \$16,000 to casinos in Las Vegas and Puerto Rico and
15 Connecticut. He gave campaign contributions, including a
16 \$1,000 contribution to the Tsongas campaign, in the amount of
17 \$7,900 from the BayBank account.

18 Now, your Honor, during this time period, Mr. Rizzo
19 was heavily involved in gambling. One individual, who took
20 bets on sporting events only for a six-week period, testified
21 that Mr. Rizzo would bet a thousand dollars on a game, on
22 basketball and football. Sometimes during the basketball
23 season, 20 to 40 games per day. He bet up to 25 to 50
24 thousand dollars per week through this one individual, James
25 Martin.

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1 Another area bookie. Vincent Petteenelli, indicates
2 that Mr. Rizzo would bet two to three hundred dollars per
3 game with him over a six- to eight-year period, and during
4 the period leading up to and covering the indictment; that on
5 a Sunday, any given Sunday, Mr. Rizzo would generally bet on
6 approximately 12 games; and that Rizzo lost 40 to 50 thousand
7 dollars betting through him.

8 Mr. Rizzo, your Honor, traveled to casinos
9 repeatedly throughout this period and prior to this period,
10 during the 1980s. At the time of the indictment he owed a
11 casino in Las Vegas approximately \$100,000, and he owed a
12 casino in Puerto Rico approximately \$40,000.

13 Your Honor, that, in essence, is the factual basis
14 for the indictment. I would just say finally that the mailed
15 items in Counts 1, 2, 3, 6, and 8 all were transported or
16 mailed through the United States mails; and that the Tsongas
17 Committee sent false reports, false because of Mr. Rizzo's
18 concealment of his fraud, on February 12th, February 5 and
19 February 24 of 1992 down to the FEC.

20 THE COURT: All right. I am satisfied that
21 the defendant understands the nature of the accusations
22 against him in the several counts of the indictment; that he
23 understands the maximum consequences of a guilty plea
24 independent of the plea bargain that's been suggested to me;
25 that he understands the maximum consequences; that he's

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1 pleaded guilty voluntarily; and that there is a basis in fact
2 for his having done so.

3 I understand that you would like me to sentence him
4 today, is that it?

5 MR. O'CONNOR: Yes, your Honor.

6 Mr. Savage, if he could, would address the plea
7 agreement and the government's reasons behind the plea
8 agreement.

9 MR. McCANN: Your Honor, I do also need some
10 assistance from the Court on a couple of issues on the
11 presentence report, as completed by Ms. Toye, to clarify a
12 couple of issues. I will try to make that as short as
13 possible.

14 THE COURT: Go ahead.

15 MR. McCANN: Do you want to do that now?

16 THE COURT: Yes.

17 MR. McCANN: If I may, your Honor, that may
18 be helpful.

19 There are -- first of all, I have sent to the Court
20 -- Ms. Toye and the government do have a copy -- a response
21 and motion for modification to the presentence report dated
22 October 6th, prepared by Ms. Toye.

23 Most of the issues in here, your Honor, are issues
24 that are unrelated to the counts of conviction in this
25 matter. So that, as the document itself says, what I would

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1 ask that the Court order, with some modification, that it
2 accompany the presentence report so it becomes part of the
3 record for the file going to the Bureau of Prisons.

4 THE COURT: I am not sure what you're talking
5 about. I have the presentence report. It was filed today.
6 It is Document 51.

7 MR. SAVAGE: We don't have an objection to
8 that.

9 THE COURT: We will attach Document 51, which
10 is entitled Nicholas Rizzo's Response to Motion for
11 Modification to the Presentence Report.

12 MR. McCANN: There are in that report, your
13 Honor -- in that document there are three areas that I must
14 respond to.

15 If you'd be kind enough to look at Page 3.

16 THE COURT: Of the response?

17 MR. McCANN: Of the response, your Honor.

18 (Pause.)

19 MR. McCANN: It says PSR, Page 9, Paragraph
20 2, there is a colloquy that was submitted to the Probation
21 Department by the government. We, as a response, your Honor,
22 agree that it was 25,000, not \$40,000, solicited from Thomas
23 Xelley, and that the rest of the conversation simply did not
24 take place.

25 THE COURT: From Mr. Griswold, not

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1 Mr. Kelley?

2 MR. McCANN: That's right, your Honor.

3 THE COURT: Well, you're just emphasizing
4 that --

5 MR. McCANN: That one there was important to
6 clarify, your Honor.

7 If you go to Page 4, the bottom part, I am waiving
8 that section, which is PSR, Page 12, Paragraph 44, and it
9 should be stricken.

10 THE COURT: Let me make a note of that.

11 (Pause.)

12 THE COURT: Stricken by agreement of the
13 parties?

14 MR. SAVAGE: Yes, your Honor.

15 MR. McCANN: Yes, your Honor.

16 Page 5 we have a separate problem, your Honor. In
17 the --

18 THE COURT: Wait a minute.

19 (Pause.)

20 THE COURT: Go ahead.

21 MR. McCANN: On Page 5 you will see three
22 separate sections with PSR. Page 12 and Page 13 up on the
23 top, that talk about bank fraud, and the Paragraphs 45, 46,
24 and 47, as shown in the presentence report developed by
25 Ms. Toye.

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1 Those paragraphs, your Honor, relate to counts to be
2 dismissed. And in those are the -- because the contract is
3 with the government for those counts to be dismissed, your
4 Honor, I submit to you that under that contract, by the
5 dismissal, the information is no longer relevant. It's
6 prejudicial and not probative to any issue related to the
7 scheme in those counts to which Mr. Rizzo pleaded guilty to.

8 By leaving those in there -- and, by the way, Page
9 12, 48, 49, 50 and 51, and Page 13, 52, 53, 54, and 55, are
10 all the same, your Honor. I am asking that your Honor strike
11 all of those paragraphs as related to the presentence report
12 so that that documentation does not go with Mr. Rizzo when it
13 accompanies him to the Bureau of Prisons.

14 THE COURT: In other words, you are asking
15 that Paragraphs 45, 46, and 47 of the presentence report be
16 stricken?

17 MR. McCANN: As well as 48, 49, 50, 51, 52,
18 53, 54 and 55. They all have the same repeated through them,
19 your Honor. They are counts to be dismissed and --

20 THE COURT: You are really arguing in
21 furtherance of what is set forth on Page 5?

22 MR. McCANN: That's correct.

23 THE COURT: Do you have any objection?

24 MR. SAVAGE: We do, your Honor.

25 The Probation Office is required under the

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1 sentencing guidelines to put in criminal conduct that may
2 have occurred. The Probation Office has been very explicit
3 in its presentence report today that these are not matters
4 that went into the guideline calculations, and that they
5 shouldn't have. And, since they did not and shouldn't have,
6 but, in fact, they're required to put it in the report, I
7 don't see any prejudice to the defendant.

8 The Court has got it exactly the way it ought to be.
9 You know, his objection to it is attached. So I don't see
10 any reason to strike what the Probation Office is required to
11 do in the first place.

12 THE COURT: I do not understand where the
13 prejudice would be.

14 MR. McCANN: I am not --

15 THE COURT: I will take it into
16 consideration anyway.

17 MR. McCANN: Unfortunately, your Honor, the
18 Bureau of Prisons, once the presentence report, as we all
19 know, and the documentation that I have submitted as a
20 response to the motion for modification, they are -- become a
21 major portion of Mr. Rizzo's file as within the Bureau of
22 Prisons. So that any action they may take within the Bureau
23 of Prisons system takes into account whatever information is
24 in both the presentence report and in the documentation that
25 you have allowed as a modification to it.

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1 Those particular areas talk about criminal activity
2 that, in fact, are counts to be dismissed and they could be
3 prejudicial to him within the confines of the Bureau of
4 Prisons, your Honor.

5 THE COURT: Tell me how..

6 MR. McCANN: They're not probative to any
7 issue.

8 THE COURT: I understand, but where does the
9 prejudice comes in? I am not going to take it into
10 consideration in deciding whether to accept the plea bargain;
11 and, if I accept the plea bargain, the sentence is going to
12 be 52 months; and that is what he will serve. So how is he
13 affected by that?

14 MR. McCANN: He is affected by -- within the
15 Bureau of Prisons system, within the confines, wherever he
16 goes, your Honor, there is a social worker, there is a board
17 that reviews his status.

18 THE COURT: I understand. They can't give
19 him any more time.

20 MR. McCANN: No, they can't.

21 THE COURT: He will get --

22 MR. McCANN: They can place him into medium
23 security, minimum security, a farm situation within the
24 confines of the Bureau of Prisons. And that information
25 that's in there could be used prejudicially against him, and

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1 it is not probative to any matter before the Court, and I ask
2 that it be stricken.

3 MR. SAVAGE: Your Honor, first of all, I have
4 no track record or authority from the Bureau of Prisons to
5 deal with what Mr. McCann is afraid of, but it's an academic
6 exercise, because the Bureau of Prisons will have the
7 indictment. They'll see those counts that are dismissed.
8 This information, which is simply repeated essentially in the
9 presentence report, although part of what the Probation
10 Office has to verify, is going to be available to the Bureau
11 of Prisons anyway.

12 So what he's asking for is a release from something
13 he can't get released from, and which is something I don't
14 think there's a problem for him anyway. So there's no
15 prejudice.

16 THE COURT: The indictment does not go with
17 the presentence report, does it?

18 THE PROBATION OFFICER: Yes, it does, the
19 judgment and presentence report.

20 THE COURT: The judgment, but not the
21 indictment.

22 The paperwork that goes along with it does list
23 counts that are dismissed anyway.

24 MR. McCANN: It does, your Honor, but it does
25 not go into the extensive monologue that's in there alleging

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1 a series of items or issues that may or may not have
2 happened. And they're not probative to anything in here.
3 They should be stricken.

4 THE COURT: I think they are not probative,
5 either. So why don't I adopt your position. I will strike,
6 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, and 55. Okay.

7 MR. McCANN: Thank you, your Honor.

8 This is something -- again, Ms. Toye and I are
9 familiar with each other in other matters, your Honor, and I
10 need the assistance of Ms. Toye in this issue. There is a --
11 in the response for special assessment --

12 THE COURT: Is there a particular place you
13 are referring me to?

14 MR. McCANN: Oh, I'm sorry. Yes, your Honor,
15 on Page 6, under PSR Page 31 of the special assessment,
16 Paragraph 144, the original calculation we both agree was
17 incorrect. However, Ms. Toye has far more skill than I do in
18 trying to estimate what these numbers actually are.

19 MR. SAVAGE: I may be able to help, your
20 Honor. I think the correct number is \$825, because some of
21 the counts are \$25 special assessment because they're
22 misdemeanors. The others are \$50.

23 I think Ms. Toye agrees it's \$825.

24 MR. McCANN: Whatever that number is that is
25 appropriate. It's not 2500.

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1 THE COURT: We will adopt that.

2 What else?

3 MR. McCANN: That takes care of all of the
4 issues.

5 THE COURT: Okay, thank you.

6 We are going to have disposition now. Does the
7 government have any recommendation?

8 MR. O'CONNOR: Your Honor, the full
9 recommendation is the 52-month sentence that the parties are
10 jointly asking for in the plea agreement, a three-year term
11 of supervised release, no fine, and an \$825 special
12 assessment, restitution to the following victims in the
13 following amounts: to the Tsongas Committee, \$155,000; to
14 Elkin McCallum, \$250,000; to Anastasios Kalogianis, \$249,000;
15 to Roger Trudeau, \$80,000; to Thomas Kelley, 25,000; to
16 William Berg, \$30,000; to Peter Caloyeras, \$10,000; and to
17 Larry Ansin's estate in the amount of \$100,000, for a total
18 restitution amount of \$899,000.

19 In addition, your Honor --

20 THE COURT: How is he going to pay it?

21 MR. O'CONNOR: Your Honor, I do not know how
22 he is going to pay it, but I would like the restitution order
23 in place, your Honor, to the extent that assets become known
24 to the government, or to the extent that he gains assets.

25 I do not know the extent to which he may be

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1 receiving large fees. Throughout the scheme he was telling
2 people that he had ownership interests in limited
3 partnerships; that he had monies coming from various
4 individuals. He made those representations to the bank. I
5 think most of them were false. But I just do not know,
6 except for what he says, how much money he has or is likely
7 to have available to him.

8 THE COURT: Okay. I understand.

9 MR. O'CONNOR: And, finally, your Honor, I
10 would ask that the Court issue a forfeiture order that the
11 government has moved for in the amount of \$600,000. And that
12 is pursuant to the supplemental plea agreement.

13 THE COURT: Again, where are the funds? In
14 other words, if I issue an order for forfeiture, that is now.
15 That is not in the future. Is there \$600,000 that you can
16 identify?

17 MR. O'CONNOR: We have not specifically
18 identified \$600,000, your Honor. We have agreed with counsel
19 that the proceeds, as part of Count 48, which refers back to
20 Count 9, that that would be an appropriate figure.

21 THE COURT: Is there any objection to this
22 notion for order of forfeiture?

23 MR. McCANN: As to forfeiture, there's one
24 modification, your Honor. The government has agreed under
25 that order of forfeiture of \$600,000 cash that the government

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1 will not seek to go after the home that Mrs. Rizzo is living
2 in during her lifetime, as I understand that.

3 THE COURT: Where does it say that?

4 MR. O'CONNOR: Your Honor, it doesn't say
5 that. That was a point raised just prior to the hearing.
6 And I will represent to the Court that the government will
7 not seek to forfeit the house as long as Mr. and Mrs. Rizzo
8 are joint tenants. In other words, so long as Mrs. Rizzo is
9 alive.

10 (Pause.)

11 THE COURT: Well, if I go along with it, I
12 want the motion and order amended to reflect specifically the
13 understanding between the parties. It is not that I do not
14 trust you, Mr. O'Connor -- I do very much -- but, as young as
15 you are, you might die and I might die. I want you to put it
16 in writing so that everybody will understand.

17 MR. McCANN: I would like to be heard, your
18 Honor, if I may, on a couple of issues.

19 THE COURT: Okay. I am going to give you an
20 opportunity to be heard. Are you talking about the sentence
21 or something before the sentence?

22 MR. McCANN: As to restitution, your Honor.
23 As to the issue of restitution.

24 THE COURT: Why don't we take these in order.
25 Why don't I hear from Mr. Savage.

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1 MR. SAVAGE: Your Honor, I'm just going to
2 briefly outline why we think that the 52-month recommendation
3 is what the Court ought to go with.

4 Recognizing that it is a compromise that the parties
5 reached and it is not necessarily a perfect answer to any
6 problem, but this -- obviously, 52 months is a substantial
7 sentence, but this is a serious case that I think demands a
8 serious sentence.

9 From a mitigation perspective, Mr. Rizzo has
10 resolved this in an early manner and saved significant
11 resources of the Court and significant resources of a trial,
12 and it's likely to have some benefit for the Federal Election
13 Commission as well as resolving this matter in its entirety.
14 So the plea agreement recognizes those facts, and also
15 recognizes the fact that Mr. Rizzo did a number of
16 civic-minded things in his life that were good and to his
17 credit. So it recognizes that he did not spend entirely a
18 life of crime.

19 On the other hand, there's a number of aggravating
20 factors. One, of course, is the size of the fraud. A
21 million dollars, obviously, is substantial. This is the
22 largest case the FEC has ever had. So from their perspective
23 -- they follow these all the time -- it is a matter of some
24 significance.

25 The arena in which this occurred, in the context of

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1 a presidential campaign, is an aggravating factor because,
2 unlike the regular person who's handling money, Mr. Rizzo not
3 only owed an obligation to the candidate but he owed an
4 obligation to the donors and to the taxpayers who were coming
5 up with matching funds for what he was stealing and to the
6 voters as a general matter. So this is a special fiduciary
7 relationship that Mr. Rizzo violated.

8 The victim impact statement of the Tsongas campaign
9 goes through the specific ways that that campaign was hurt,
10 and I know the Court has reviewed this, so I am not going to
11 go into it again.

12 But I think the 52 months will give this Court an
13 opportunity to send the signal that ought to be sent to both
14 campaigns in the future, that campaigns need to strictly
15 watch people that are dealing with the money, and to the
16 people that are likely to be in Mr. Rizzo's position in the
17 future who are actually handling the money, that they can't
18 put it in their pocket or there will be serious consequences
19 to follow.

20 I think, in addition to the size and the arena in
21 which the fraud occurred, the method which Mr. Rizzo used,
22 aggravated a little bit in a way that justifies 52 months, in
23 the sense that he was using the name of Mr. Tsongas. He was
24 using the name of the Committee.

25 In some cases it was a typical fraud in that he

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1 appealed to the self-interest of the people who were
2 donating. Those people wanted something, and he played on
3 that.

4 The Trudeau example, that Mr. O'Connor talked about,
5 is an example of where Mr. Rizzo took advantage of people's
6 impulse to participate in the process for the right reason.
7 Trudeau, agree or disagree, had strong ideological reasons
8 for supporting Mr. Tsongas and went to the point of tapping
9 himself out entirely financially, and Mr. Rizzo took
10 advantage of that ideology and that belief in the candidate.
11 And the system, of course, depends on people like that who
12 are willing to make sacrifices to support candidates of their
13 choosing. And, to the extent that that trust was violated,
14 that's a particularly aggravating factor.

15 Mr. Rizzo also played on the cancer issue when he
16 got the money out of Mr. Kelley. And he talks about how Paul
17 Tsongas had cancer at the same time that Mr. Kelley's father
18 had cancer, and sort of playing on Mr. Kelley's humanity to
19 get the money. This, again, is something that is not of the
20 ordinary fraud and is something that --

21 THE COURT: He claims he did not take any
22 money. He says he took it from somebody else.

23 MR. SAVAGE: I think Mr. McCann will agree
24 that he originally approached Mr. Griswold, but got the money
25 eventually from Mr. Kelley.

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1 MR. McCANN: That's correct, your Honor.

2 Mr. Kelley worked for Mr. Griswold, and the
3 discussion that allegedly took place, if it ever took place,
4 as it relates to Mr. Kelley --

5 THE COURT: Do you have it?

6 (Pause.)

7 MR. SAVAGE: The Judge has read the document.
8 Mr. McCann tried to correct it.

9 THE COURT: This document says Mr. Rizzo
10 never solicited \$40,000 from Thomas Kelley, nor did any of
11 the conversations take place as described in Paragraph 32.
12 Mr. Rizzo did solicit \$25,000 from a Mr. Thomas Griswold,
13 Mr. Kelley's employer, during this time frame.

14 MR. McCANN: Again, correct. One thing I
15 left out there. We found out, and I did talk --

16 THE COURT: I can't hear you.

17 MR. McCANN: I did talk to the government,
18 your Honor, that it was Mr. Kelley that wrote the check out,
19 not Mr. Griswold. That's the one piece that's not in there.

20 THE COURT: But you deny the conversation
21 took place?

22 MR. McCANN: That's correct. Absolutely.

23 THE COURT: All right.

24 MR. SAVAGE: The Kelley conversation
25 notwithstanding, Mr. Rizzo then relied on his claim of having

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1 having liver cancer in conversations with Paul Tsongas, Elkin
 2 McCallum, and others as an explanation of why he ought to be
 3 given some slack in terms of hanging onto the money. He
 4 didn't have liver cancer. He never had liver cancer. It's
 5 not true. It's something he relied on to try to spit the
 6 hook here, and that's a factor that aggravates it.

7 The reasons he wanted the money are also aggravating
 8 factors. He basically chose to victimize Paul Tsongas'
 9 friends so that he could pay his own friends at the bank.
 10 All at the same time that he knew he was in desperate
 11 financial straits, he's pouring all that money into bookies
 12 and a variety of personal expenses that the Court is familiar
 13 with from the indictment.

14 Finally, when he got caught, he lied to the
 15 loaners. He lied to the donors. He lied to the campaign.
 16 He lied to the FEC. And while he has met the minimal
 17 standards of acceptance of responsibility, I think the Court,
 18 in reading the presentence report, can see that he's not,
 19 shall we say, excessive in his expression of remorse or
 20 acknowledgement of the seriousness of what has happened here.

21 So in light of both mitigating and aggravating
 22 factors, I think the Court ought to accept the government's
 23 version and the government urges the Court to accept the
 24 52-month agreement and dispose of the matter on that basis.

25 THE COURT: Okay. Mr. McCann, do you have

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1 any quarrel with that recommendation?

2 MR. McCANN: No, I don't, your Honor, but I
3 would like to be heard on a couple of issues.

4 THE COURT: Go ahead.

5 MR. McCANN: As far as the order requesting
6 restitution, your Honor, my client has nothing.

7 The reason we are here today is because my client is
8 an individual who constantly put business deals together,
9 borrowed on those deals for the next future earnings. And we
10 are here today because he did precisely what the government
11 said he did; that is, he borrowed significant funds from
12 various parties, converted them to his own use to take care
13 of many obligations that he had made to other people for past
14 commitments. There is no money, your Honor.

15 With this sentence, he's going to be incarcerated
16 for a term. When he comes out, there is nothing for him if
17 there is an order of restitution. He simply can't earn. He
18 will be 63 to 64 old. There is no incentive for him to do
19 anything. In fact, if anything, he will be coming out with
20 that kind of Damocles sword hanging over his head and he will
21 be despondent. He could be in a situation where he could be
22 highly depressed, your Honor, something he's been treated for
23 already.

24 So I suggest to you that any kind of order of
25 restitution simply doesn't make any sense whatsoever. He has

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1 nothing now. He will have even less three and a half to four
2 years from now, your Honor.

3 But, also, I would ask your Honor to consider a
4 little bit of Mr. Rizzo as far as his background. He's going
5 to be 60 years old in December of this year. My partner,
6 Mr. Manzi, and I spent probably close to nine months working
7 with this man, and I can tell you we've learned an awful lot
8 about him, the people that he's been associated with, his
9 history and his background. He spent a great portion of his
10 adult life supporting his family. He's committed to his
11 family, his wife, and his public responsibilities. He's done
12 this extensively for the past 25 to 30 years. He served on
13 boards of banks, of public charities. He's been honored by
14 his fellow citizens, both locally, in the state level, and
15 even nationally.

16 During his adult life he was constantly in positions
17 of trust. And in those positions of trust, your Honor, he
18 dealt with millions and millions of dollars. And at no time
19 was his integrity or his character ever impugned, never.

20 What'did happen -- and you've probably seen it
21 coming through the courts and newsprint in the past couple of
22 years -- is what we had was a man of honor whose work was
23 paramount. If he went to a banker or he went to a friend who
24 had money and said to them, "I am going to put this deal
25 together. Do you want to be involved? Do you want to

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1 invest? May I borrow," your Honor. "\$150,000, and I will
 2 give you my note for it," he always, always, always, paid
 3 those notes off. His word was gold. And some of the bankers
 4 that Mr. O'Connor talked about, if they came before you
 5 during the trial, you'd find that many of those funds that
 6 were lent were lent based on his word, based on his
 7 experience with them over the past 10 - 15 years.

8 What's happened is he built a successful business.
 9 He was always anticipating earnings, borrowing against those
 10 earnings for the next year. We've all seen that with
 11 developers, people who come through here, million-dollar
 12 deals with condominiums, commercial properties. And with the
 13 recession, what we have is an absolute disaster: the cash
 14 flow stopped, absolutely stopped.

15 Up until that time he met his financial obligations
 16 to those individuals and those financial institutions. The
 17 recession destroyed his ability to repay those loans. His
 18 struggle to maintain his commitments became so overpowering,
 19 so intense, that it substantially clouded his judgment and
 20 his lost his ability to distinguish right from wrong.

21 Nicholas Rizzo is telling you through me, his
 22 agent, your Honor, that he alone was solely responsible for
 23 soliciting that \$794,000 of funds. He knew it could never be
 24 used for the Tsongas campaign. It's important to him that
 25 you and the public know that he would never have

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1 intentionally done anything to harm Paul Tsongas' campaign.
2 Mr. Rizzo was not responsible for the campaign running out of
3 money. He was, from the time the decision was made to run
4 for the presidency until months after Mr. Tsongas' withdrawal
5 from the campaign, dedicated to the campaign. He exerted
6 every effort to raise funds for the Tsongas campaign; and, as
7 a matter of fact, even after this account, this Andover bank
8 account became public -- when I say "public," public to
9 Mr. Kanin, public to Mr. Goldman, which happened, by the way,
10 in February of 1992 -- he continued for months thereafter to
11 raise funds to reduce the campaign deficit.

12 This individual we're talking about, your Honor, to
13 this day considers that he does have a responsibility to the
14 ones he solicited, but there's no way he can ever repay those
15 funds. Most importantly, there's no way that he can ever
16 repair the damage to himself, to his family, and to his
17 friends who believed in him. He believes that he is
18 responsible for the actions that he has been charged with,
19 and he is willing to accept total responsibility for those
20 actions, and he authorized us to negotiate the agreement
21 which we have before you, and he asks you to accept that
22 agreement.

23 In addition to that, we are asking if your Honor
24 would please allow him to self-report and also allow him to
25 self-report sometime after January 1st; and our

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1 recommendation would be Monday, January 17.

2 Thank you.

3 THE COURT: Mr. Rizzo, you are about to be
4 sentenced. As one facing sentencing you have the right to
5 address the Court. You have the right to tell me anything
6 that may be on your mind, if you care to do so. If you
7 prefer to remain silent, you may remain silent without the
8 fear of being prejudiced.

9 THE DEFENDANT: Your Honor, I take
10 responsibility for what I did.

11 And when you mentioned at the beginning of this
12 session about me waiving my constitutional rights, I
13 understood; but it wasn't until I heard Mr. O'Connor that I
14 realized the full impact of waiving my rights.

15 I had to sit here and listen to allegations that I
16 would have had the opportunity to defend myself against in
17 court, but I have given up that right, and I understand that;
18 but I do know that some of what came out this afternoon
19 simply is not true.

20 Substantially, the charges are true. I did borrow
21 money. I accepted responsibility then. I still do. If I
22 ever have the ability to make money, I have no way of knowing
23 that, I would pay them back. When I listed my -- what I
24 consider to be my outstanding debts -- for the Probation
25 Officer, Ms. Toye, I listed those people.

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1 When I -- you know, all this goes back to when I
2 first -- when I first submitted the information to the
3 Committee and then had to submit the information to the FEC,
4 I listed them all. To the best of my ability, I listed them
5 all, those that I borrowed from. And they were loans, and
6 they were loans that were made that I told each of the
7 individuals that I would be responsible for, and I still feel
8 I am responsible for, the repayment.

9 I know what I did was wrong. I understand that.

10 THE COURT: Anything else?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: All right. I think that the
13 recommendation of the government is a reasonable one in most
14 respects, and I am going to follow it. So I am going to
15 impose the 52-month sentence and the three years of
16 supervised release and the \$825 special assessment.

17 With respect to restitution and forfeiture, I will
18 allow the forfeiture order as amended here in open court, but
19 I want it memorialized, and I know you will do that,
20 Mr. O'Connor, to reflect that it does not affect the family
21 residence as long as they live there in the present capacity.

22 As far as the restitution, I will issue that
23 restitution order as suggested, but only for a period of five
24 years. And the reason I do it -- I have no reason to think
25 that you have done anything other than recite your assets.

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1 So I am not suggesting that you have any hidden assets, and I
2 I do not say it with frivolity.

3 The argument has been made to me, I think it is a
4 valid one, maybe you have made it, Mr. O'Connor, in the past,
5 that you could walk out and win Megabucks even though you are
6 incarcerated. I think the government and those who have been
7 affected are -- they should be protected if you do get an
8 extraordinary piece of good fortune such as that. So I am
9 going to issue an order for restitution in the amount
10 suggested with respect to each of the debtors that you
11 acknowledge yourself. That restitution order will continue
12 for a period of five years from this day, and thereafter it
13 will expire, unless the government can show that you have
14 some funds to pay.

15 Another reason I do that is because, I think, as Mr.
16 McCann said, five years from now, when you come out, if you
17 are going to be productive -- you will have every chance of
18 being productive -- it seems to me you will be punished
19 sufficiently and that you ought to have the opportunity to
20 face life without that several-hundred-thousand-dollar debt
21 hanging over your head.

22 So that will be the sentence. We will issue an
23 order memorializing it.

24 MR. McCANN: May I --

25 THE COURT: I will accept the recommendation

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1 to self-report. I assume there will be no objection.

2 MR. SAVAGE: That's part of the plea
3 agreement, your Honor, a date in January.

4 MR. McCANN: January 17th, your Honor.

5 THE COURT: Self-reporting, January 18th.

6 Anything else that you have before the Court?

7 MR. SAVAGE: I move, your Honor, that we
8 dismiss the counts --

9 THE COURT: We act on papers. So when you
10 give me the amended order, give Ms. Coughlin the motion to
11 dismiss, and we will do that and then I will issue an order.

12 MR. SAVAGE: Thank you, your Honor.

13 MR. McCANN: Thank you, your Honor.

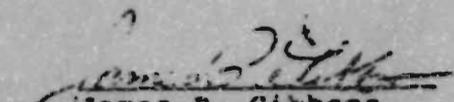
14 (Whereupon the hearing was adjourned.)
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C E R T I F I C A T E

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I, James P. Gibbons, Official Court Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes to the best of my skill and ability a true and accurate transcription of my stenotype notes taken in the aforementioned action.


James P. Gibbons

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 16, 1993

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble *LMN*
General Counsel

Kim L. Bright-Coleman *KBC*
Associate General Counsel

Carmen R. Johnson *CRJ*
Assistant General Counsel

Delanie DeWitt Painter *ADP*
Attorney

Mary Tabor *MT*
Attorney

SUBJECT: Interim Audit Report on The Tsongas for President
Committee (LRA # 424)

The Office of General Counsel has reviewed the proposed Interim Audit Report on The Tsongas for President Committee ("the Committee") dated February 8, 1993, which was submitted to this Office on February 9, 1993.^{1/} The following

^{1/} The Audit Division submitted an initial draft of the Interim Audit Report to this Office on November 10, 1992; however, the auditors made extensive and substantial revisions to the draft as a result of the receipt of additional information, corrections, and editing changes. Our comments are on the revised version of the proposed Interim Audit Report. This Office considers the due date for our comments on a proposed report to be based on the date that this Office received the most recent revision of the proposed report, in this instance, February 9, 1993.

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memorandum contains our legal analysis of the findings and recommendations in the proposed Interim Audit Report.^{2/} Should you have any questions about our comments, please contact Delanie DeWitt Painter or Mary Tabor, the attorneys assigned to this audit.

We note at the outset that the Commission issued additional subpoenas related to the Andover Bank account transactions on February 11, 1993. Information from responses to these subpoenas is not included in the current version of the proposed Interim Audit Report, and additional changes may be necessary. Moreover, additional information relevant to the Andover Bank account issues has come to our attention through a grand jury indictment filed against Nicholas A. Rizzo, Jr. United States v. Rizzo, No. CR 93-10056-T (D. Mass. filed February 22, 1993).

We further note that a number of findings in the proposed Interim Audit Report as well as a portion of the preliminary repayment calculation are related to excessive and prohibited contributions received by the Committee. A recommended Treasury payment of \$71,525 includes the following excessive contributions: (1) \$9,419 projected on a sample basis; (2) \$10,192 (including \$7,312 in untimely refunds) identified in comprehensive reviews of the Committee's contributor database; (3) \$21,500 from the partnership of Foley, Hoag & Eliot; (4) \$1,100 deposited into the Committee's Texas account; and (5) \$29,314 deposited into the Andover Bank account. We note that the proposed Interim Audit Report excludes other apparently excessive contributions from the Treasury payment, including loans solicited by Mr. Rizzo ostensibly to benefit the Committee, a contribution by the Armenakis & Armenakis law firm, and contributions resulting from advances under 11 C.F.R. § 116.5.

The necessity for a Treasury payment rather than refunds to contributors originated with the Audit Division's proposal for the current election cycle to test receipts on a sample basis. Under the sampling procedure, the Audit Division does not identify the specific individual contributors in the sample who should receive refunds of excessive or prohibited contributions. At the time the Commission approved the sampling procedures, this Office cited the equitable relief theory of disgorgement as a possible basis for requesting committees to pay illegal contributions to the government.

^{2/} Parenthetical references are to the placement of findings in the proposed report. Throughout our comments, "FECA" refers to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455, and "Matching Payment Act" refers to the Presidential Primary Matching Payment Account Act, 26 U.S.C. §§ 9031-9041.

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See 2 U.S.C. § 437d(a)(6) and 437g(a)(6)(A) (giving Commission power to obtain equitable relief). See generally United States v. Bonanno Organized Crime Family of La Cosa Nostra, 683 F. Supp. 1411 (E.D.N.Y. 1988), aff'd, 879 F.2d 20 (2d Cir. 1989) (holding disgorgement to be an appropriate, non-punitive remedy to deprive wrongdoers of their ill-gotten gains and to deter future violations). Another advantage of the disgorgement approach is that it eliminates the need for the Commission to monitor a committee's refunds of illegal contributions, would be easier for a committee than refunding multiple contributions, and might serve to deter FECA violations. Therefore the Commission adopted the disgorgement approach, and notified committees that excessive and prohibited contributions must be paid to the United States Treasury. Presidential Committee Notification Letter - Use of Sampling to Project the Dollar Value of Audit Findings, approved May 29, 1992. The Commission sent letters to committees on June 2, 1992, which stated that the Commission would no longer recognize untimely refunds, redesignations or reattributions made more than 60 days following a candidate's date of ineligibility or made after the date of receipt of the notification letter, whichever was later. The letter stated that after the deadline the Commission would request committees pay the amount of unresolved prohibited and excessive contributions to the United States Treasury.

Some significant problems are now emerging as a result of the implementation of this policy. One is that the disgorgement approach raises the possibility that a committee would have to make two payments for a particular illegal contribution if the Committee had already refunded the contribution to the contributor. For example, one presidential committee argued that the deadline for refunding excessive contributions was not clearly conveyed by the letter and another argued that the appropriate officials in the campaign organization did not receive the notification letter. The result was that these committees refunded excessive contributions after the deadline and, thus face the possibility of paying the same funds to the United States Treasury. The Commission did not intend to require duplicate payments from committees when it implemented this policy.

Duplicate payments could also occur if the contribution was in the form of a loan or staff advance. Arguably, such a result would be inequitable. A person making a loan, unlike other contributors, has a reasonable expectation that the funds will be returned when the loan is repaid. Similarly, a staff person who advances funds to the committee, particularly for his or her own travel and subsistence, has a reasonable expectation that the advance will be repaid. Yet section 116.5 provides that staff advances are contributions except in strictly limited circumstances, which are largely out of the staff person's control. If committees must pay

loans and staff advances to the United States Treasury, they may be unable or unwilling to also repay the staff or lenders. Arguably, it is against public policy to discourage committees from repaying their loans and obligations, even if the debts are illegal contributions. Thus, disgorgement may be inappropriate for contributions in the form of loans or staff advances.

Moreover, the approach has not yet been codified in the Commission's regulations, and it is not based on any provision of the FECA. Thus, the approach may be susceptible to challenge by an audited committee.

We note that the proposed Interim Audit Report does not recommend a repayment to the Treasury based on loans and staff advances. We concur with this approach for the reasons stated above. While potential problems remain, this Office understands that the Audit Division wishes to pursue repayments of all other excessive contributions, as originally planned.

We concur generally with a number of findings in the proposed Interim Audit Report which are not discussed separately below. We concur with the analysis of the Victoria Bank and Trust Account (II. B., II. A. and B., IV. C. and D.), including the two excessive contributions totaling \$1,100. Moreover, we agree with the recommendation concerning misstatements of financial activity (III. B.).

I. THE ANDOVER ACCOUNT (II. A., III. A. and B., IV. C. and D.)

A. Background

Prior to fieldwork on the audit of the Committee, the Committee's counsel disclosed that campaign staff had discovered an unauthorized bank account ("the Account") maintained by Nicholas A. Rizzo Jr., a fundraising consultant, in the Committee's name at the Andover Bank in Andover, Massachusetts.^{3/} On September 8, 1992, the Commission issued subpoenas to Mr. Rizzo, two of his companies, eight banks, six individual lenders, an accountant who was paid \$10,000 from the Account, and the Committee's printer. Review of the subpoena responses indicated that additional information was necessary. Therefore, the Commission issued additional subpoenas to ten of the original entities and individuals and one additional financial institution on February 11, 1993. The Audit Division has referred apparent violations by Mr. Rizzo and the individual lenders to this Office. MUR 3585. Moreover, a grand jury

^{3/} Mr. Rizzo opened the Account in early March, 1991; however, the Committee asserts it did not become aware of the Account until early 1992 when a contributor notified the Committee that his contribution had not been acknowledged.

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indictment recently filed against Mr. Rizzo reveals additional facts which may have an impact on the audit and repayment issues related to the Account.^{4/} United States v. Rizzo, No. CR 93-10056-T (D. Mass. filed February 22, 1993.)

According to the Committee, Mr. Rizzo controlled the Committee's finances, was authorized to function as the chief fundraiser, and was paid a consulting fee.^{5/} During most of 1991, the Committee's business was handled from Mr. Rizzo's office in Andover. He had authority to approve payment vouchers, wrote checks on the Committee's accounts, and controlled the checkbook for the operating account until late 1991. Mr. Rizzo was paid a monthly consulting fee either directly or through his consulting firm, Benco Consulting and Marketing, Inc. ("Benco"), a Massachusetts corporation for which he serves as president and treasurer.

The Audit Division's review of available Account records concludes that net deposits into the Account totaled \$719,309. It appears that less than \$200,000 of the funds in the Account were legal contributions within the prohibitions and limitations of the Act. According to the Audit Division's review, at least \$189,737 of the \$719,309 deposited into the Account were apparently individual contributions intended for the Committee. Included in this amount are excessive contributions totaling \$29,314 from 42 individuals. Another \$514,000 of the deposits into the Account represented loan checks from seven individuals made payable to the Committee. No source has yet been identified for the remainder of the Account receipts, which total \$15,572.^{6/} In addition to the \$514,000 in loans made payable to the Committee and deposited into the Account, Mr.

^{4/} The grand jury indictment alleges myriad criminal and election law violations including mail fraud, financial transactions with proceeds of illegal activity, bank fraud, false statements to the Commission and a knowing and willful violation of 2 U.S.C. § 441a(a)(1)(A).

^{5/} In Mr. Rizzo's subpoena response, he states that he was the principal fundraiser for The Tsongas Committee from April to June, 1991, and that he organized events; formed committees; solicited funds; and planned events. He states that he was authorized to make expenditures on the Committee's behalf by the Committee's Campaign Manager, and Business Manager, and that he had daily contact with the campaign.

^{6/} The Audit staff had been unable to identify a source for a \$60,000 deposit made on December 4, 1991. The grand jury indictment states that this check was a loan that Mr. Rizzo solicited from William Berg, ostensibly to benefit the Committee. United States v. Rizzo, No. CR 93-10056-T, page 9 (D. Mass. filed February 22, 1993.)

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Rizzo solicited four additional loans totaling \$280,000 ostensibly on behalf of the Committee.^{7/} Thus, Mr. Rizzo solicited and received a total of \$794,000 in loans from eight individuals which were intended for the Committee. It appears that only \$65,000 of the loan total have been repaid as of this date.

The subpoena responses from individual lenders provide additional information concerning the loans. In a response dated October 20, 1992, Thomas D. Kelley Jr. stated that he made an unsecured, interest-free loan in the amount of \$25,000 to the Committee on October 22, 1991, and that the loan check was deposited in the Andover Bank.^{8/} See Kelley Response. According to his response, Mr. Kelley met Mr. Rizzo, who said that he was the campaign manager for the Tsongas Committee, in October, 1991. Id., Page 2. Mr. Rizzo solicited a loan to the Committee, and promised it would be repaid with matching funds which the Committee would receive in January, 1992. Id. Mr. Kelley states that he agreed to make an interest-free unsecured loan of \$25,000 to the Committee based on Mr. Rizzo's representations, and that Mr. Rizzo offered a personal guarantee that Mr. Kelley would be repaid. Id. Mr. Rizzo sent a check dated September 25, 1992 to Mr. Kelley in July, 1992 to repay the loan, and requested that Mr. Kelley not cash the check until September, so that funds could be deposited to cover the check. Id. Mr. Kelley has not yet cashed the check. Id. In July, 1992, Mr. Rizzo also sent a promissory note back-dated to October 24, 1991 to Mr. Kelley, in which he promised to pay him the \$25,000. Id. However, Mr. Kelley states that he loaned the money to the Committee, and "categorically" denies that the loan was made to Mr. Rizzo personally. Id.

Another lender, Michael Spinelli, states in his September 26, 1992 response that he met Mr. Rizzo at a reception on October 10, 1991. Spinelli Response, Page 8. Mr. Rizzo had arrived with Senator and Mrs. Tsongas, and requested that Mr. Spinelli come to his office the following day. Id. The next day, Mr. Rizzo solicited a loan from Mr. Spinelli in the amount of \$20,000, purportedly for the Committee to use for a television campaign in New Hampshire. Id. Mr. Rizzo assured

^{7/} According to subpoena responses, Mr. Rizzo requested that two lenders make the loan checks totaling \$200,000 payable to him. In addition the grand jury indictment reveals that Mr. Rizzo solicited two loans from Roger Trudeau totaling \$80,000 and deposited the proceeds into a Benco account at the Andover Bank. United States v. Rizzo, No. CR 93-10056-T (D. Mass. filed February 22, 1991).

^{8/} We recommend that the narrative portions of the subpoena responses related to this matter and the grand jury indictment be included as attachments to the Interim Audit Report.

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Mr. Spinelli that the loan was "absolutely" legal. Id. Mr. Rizzo stated that the Committee was the debtor, but gave Mr. Spinelli his personal guarantee of repayment. Id. When Mr. Rizzo, accompanied by Steven Joncas, picked up the \$20,000 check on October 16, 1991, Mr. Spinelli requested a written note reflecting the fact that the loan was against matching funds and guaranteed by Mr. Rizzo.^{9/} Mr. Rizzo said he would provide this document in a "couple of weeks," but never did so. Id. The loan was repaid by a personal check dated December 6, 1991 from Mr. Rizzo. Spinelli Response, Page 7.

A third individual, Peter B. Caloyeras, responded to the Commission's subpoena in a letter dated October 23, 1992. Caloyeras Response. Mr. Caloyeras states that he met Mr. Rizzo on September 21, 1991, and that Mr. Rizzo solicited a \$10,000 loan to the Committee to be repaid with matching funds in February, 1992. Id. Mr. Caloyeras understood that Mr. Rizzo was the National Finance Chairman for the Committee. Id.

Similarly, Lawrence Ansin's response, dated November 2, 1992, reveals that Mr. Rizzo solicited a \$100,000 loan on March 10, 1991, to be repaid on June 30, 1991 to underwrite the cost of a "white paper" being used to explore the viability of Mr. Tsongas' candidacy. Ansin Response. Mr. Rizzo told Mr. Ansin that the loan was proper and legal. Id. The loan was never repaid. Id. Mr. Ansin also contributed \$1,000 to the Committee on March 13, 1991.

Another lender, Elkin McCallum, provided a very detailed response to the subpoena on October 26, 1992.^{10/} McCallum Response. Mr. McCallum made three loans totaling \$250,000, and has received no repayments. Id. Mr. McCallum also purchased a \$1,000 ticket to a Tsongas fundraiser in April of 1991. Mr. McCallum's friend, Steven Joncas, introduced Mr. McCallum to Mr. Rizzo, describing him as the "Chief Fund Raiser for the Tsongas Committee" in August, 1991. McCallum Response, Page 3. Mr.

^{9/} Steven Joncas is a long-standing friend and associate of the candidate who was not on the Committee's payroll. Mr. Rizzo states in his subpoena response that he had frequent contact with Mr. Joncas, who accompanied Mr. Rizzo on "a variety of volunteer assignments." Rizzo Response, page 8. It is unclear to what extent Mr. Joncas was aware of, or involved in, Mr. Rizzo's solicitation of loans from various individuals.

^{10/} Mr. McCallum contacted his accountant about the transactions in March, 1992 because he had not received the loan documentation from Mr. Rizzo. After his accountant was also unable to obtain the loan documentation, Mr. McCallum had conversations concerning the transactions with the candidate, the Committee's counsel, Steven Joncas, and other Committee staff. McCallum Response, pages 8-9.

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Rizzo met Mr. McCallum on August 12, 1991 and solicited a \$100,000 loan to the Committee to be repaid in several months, after the campaign qualified for matching funds and used the federal funds as collateral for bank loans. Id. According to Mr. McCallum, Mr. Rizzo explained that Mr. McCallum's loan would be legal because the money would be used for exploratory expenses. Id. Mr. McCallum wrote a loan check for \$100,000 on August 13, 1991, and Mr. Rizzo picked up the check. Id. After Mr. McCallum repeatedly requested a note evidencing the loan, Mr. Rizzo provided a misdated one with Mr. Rizzo as the maker in September, 1991. McCallum Response, page 4. Mr. Rizzo explained that this note would eventually be replaced with a note from the Committee. Id.

Later, at Mr. Rizzo's request, Mr. McCallum assisted with Committee fundraisers. McCallum Response, Page 4. After one meeting on this subject, Mr. Rizzo solicited a second loan for \$50,000 for exploratory expenses. Mr. McCallum wrote this loan check on October 21, 1991. Id. Mr. Rizzo never provided documentation for this loan. McCallum Response, Pages 4-6. Finally, on February 10, 1992, Mr. Rizzo solicited a third loan of \$100,000 purportedly for political advertising in New Hampshire. Mr. Rizzo said that while Mr. McCallum had reached his limit on loaning funds to the Committee, Mr. Rizzo had not. Id. Therefore, he suggested that Mr. McCallum loan the \$100,000 to him, so that he could loan the money to the Committee. McCallum Response, Page 5. He again assured Mr. McCallum that the transaction was legal. Mr. McCallum wrote a check for \$100,000 to Mr. Rizzo. Id.

Anastasios Kalogianis made six loans totaling \$249,000 to the Committee and Mr. Rizzo. Kalogianis Response. According to his response dated November 5, 1992, Mr. Kalogianis made loans to the Committee as follows: \$10,000 on September 9, 1991; \$15,000 on September 25, 1991; \$24,000 on October 3, 1991; \$35,000 on December 4, 1991; and \$65,000 on December 6, 1991. Kalogianis Response, Page 2. Moreover, Mr. Kalogianis made a contribution of \$1,000 to the Committee on September 9, 1991. Id. In addition, he made a \$100,000 loan to Mr. Rizzo on January 27, 1992. Id. It appears that this loan was also intended to benefit the Committee rather than Mr. Rizzo, because the loan is included on a ledger card entitled "AK loans to Tsongas Committee" submitted by Mr. Kalogianis in the subpoena response. Mr. Rizzo deposited this loan in his personal bank account. Mr. Kalogianis states that Mr. Rizzo informed him that he could lawfully make the loans. Kalogianis Response, Page 3. Mr. Rizzo gave Mr. Kalogianis three checks to repay the loans, and stated that since he was getting a personal loan to repay the loans, Mr. Kalogianis should hold the checks until funds were deposited to cover them. Id. Since Mr. Rizzo has not informed Mr. Kalogianis that funds are available to cover the checks, Mr. Kalogianis has not yet deposited the checks. Id.

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The grand jury indictment reveals several loans from two additional individuals, William Berg and Roger Trudeau, which had not been uncovered during the audit fieldwork or from the subpoena responses. United States v. Rizzo, No. CR 93-10056-T, pages 8-9 (D. Mass. filed February 22, 1993.) According to the indictment, Mr. Rizzo solicited and received two loans from Roger Trudeau, the first for \$60,000 on August 8, 1991 and the second for \$20,000 on September 10, 1991. Id. The indictment alleges that Mr. Rizzo falsely represented to Mr. Trudeau that the loans were legal, would benefit the Committee, and would be repaid in a short time. Id. Mr. Rizzo deposited the \$80,000 into a Benco account he controlled at Andover Bank, and repaid \$15,000 of the loan amount, leaving a balance of \$65,000. Moreover, the grand jury indictment alleges that Mr. Rizzo solicited and received a \$60,000 loan from William Berg on behalf of the Committee on December 4, 1991, and falsely represented that the loan was legal, would benefit the Committee, and would be promptly repaid. Id. Mr. Rizzo deposited the loan proceeds into the Account, and repaid \$30,000 of the loan. Id. Additional information is necessary concerning these transactions, and this Office plans to issue subpoenas to these individuals in the course of the compliance action. MUR 3585. However, we believe these loans should be treated consistently with the other loan transactions, and included in the Interim Audit Report findings and calculations.

The Audit Division's review of disbursements from the Account totaling \$718,259 revealed that Mr. Rizzo wrote checks payable to himself in the amount of \$483,600. In addition, Mr. Rizzo paid \$137,615 from the Account to Benco and apparently disbursed another \$39,195 to eight banks. The responses to the Commission's subpoenas reveal that some of the payments were related to debts in the name of Mr. Rizzo or Benco.^{11/} Another \$10,000 was paid to an individual as repayment of personal loans to Mr. Rizzo and his spouse. Mr. Rizzo's spouse also received a \$1,000 payment from the Account. In addition, Mr. Rizzo paid \$25,046 in expenses to campaign vendors from the Account, including \$19,863 to the Committee's printer, \$3,243 to travel agencies, \$1,472 to a hotel and \$668 to a campaign employee. It is not clear whether the remaining \$11,994 in disbursements to identified payees were campaign-related. A remaining disbursement in the amount of \$10,809 is documented only by an entry on the bank statement, and the payee on the check is unknown.

Moreover, the Audit staff uncovered irregularities with payments made by the Committee to Mr. Rizzo, Benco and Steven Joncas, including duplicate billing for expenses, and expenses

^{11/} Responses received from the banks to Commission subpoenas further reveal that Mr. Rizzo had a large amount of outstanding personal loans, and that many of the loans were past due.

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not related to the campaign. Certain expenditures paid more than once were submitted on expense vouchers under the name of Steven Joncas. It appears that Mr. Joncas only received 3 of 12 reimbursement checks issued to him, and that the others were cashed by Mr. Rizzo. Inexplicably, it appears that vouchers were filled out in Mr. Joncas' name for campaign expenditures that were actually paid by Mr. Rizzo. In addition, it appears that Mr. Joncas' name was signed to the vouchers and checks by someone other than Mr. Joncas.

Mr. Rizzo sought reimbursement from the Committee for expenses totaling \$82,634 during the spring of 1992. According to the Audit staff's review, the expenses had been incurred between May of 1991 and February of 1992. Of the amount requested, \$21,333 had been previously reimbursed to Mr. Rizzo or paid from the Andover Bank account. The Committee maintains that \$8,379 in payments to three individuals should not be reimbursed because they were not campaign related. It appears that expenditures totaling \$57,100 in Mr. Rizzo's reimbursement requests were legitimate campaign expenditures which result in a net payable to Mr. Rizzo. However, the Committee considers this amount an offset to amounts owed by Mr. Rizzo for contributions deposited into the Account and not forwarded to the Committee.

B. Audit Findings and Analysis

The transactions related to the Account have repercussions which appear throughout the proposed Interim Audit Report in findings of potential violations as well as potential bases for repayment determinations. The most significant of the issues arising from the Account, aside from the apparent violations by Mr. Rizzo, are the excessive contributions in the form of large loans from six individuals solicited by Mr. Rizzo and the impact of the Account on the Committee's repayment.^{12/}

1. Andover Account Was a Committee Account

The threshold issue is whether the Account was a Committee account, and thus, whether the Committee is liable for Account transactions. The Audit staff considers the Account to be a Committee account for the following reasons: the Committee's name appears on the Account; Mr. Rizzo was chief fundraiser for the campaign; some Committee expenditures were made from the Account; most deposits to the Account were checks made payable to the Committee; and Mr. Rizzo had control of most of the Committee's other accounts during most of the period that the Account was active.

^{12/} Apparent violations by Mr. Rizzo and the eight individual lenders are being investigated in MUR 3585 concurrently with the audit of the Committee.

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The Committee disagrees with this position. It maintains that the Account and activity related to the Account were unauthorized. Committee Response to Exit Conference, September 14, 1992, Part A. The Committee contends that while Mr. Rizzo was its agent for fundraising purposes, his actions of opening the Account, diverting contributions, making expenditures and obtaining loans exceeded the scope of his agency. Id. The Committee raises several points to support its position, including: 1) the Committee treasurer and other employees were unaware of the Account; 2) the Account was apparently opened using Mr. Rizzo's taxpayer identification number to divert funds to Mr. Rizzo; 3) during this period, Mr. Rizzo forwarded other contributions to the Committee; 4) no legitimate Committee interest was served by the Account; rather, the Account deprived the Committee of funds during critical periods, exposed the Committee to substantial liabilities, and risked antagonizing contributors whose contributions were unacknowledged; 5) the vast majority of funds in the Account were withdrawn and used for non-Committee purposes; 6) the Committee believes that Mr. Rizzo commingled personal and Committee funds and that the loans were intended to be his personal obligations; and 7) the Committee promptly informed the Commission after discovering the Account. Id. The Committee has demanded that Mr. Rizzo forward all contributions diverted to the Account. Id.

We concur with the Audit Division's approach. Since the Committee authorized Mr. Rizzo to raise funds on its behalf, he functioned as an agent of the Committee. Under settled principles of agency law, the Committee is charged with the knowledge of its agents, and may be liable for actions by its agents. Where a committee treasurer authorizes an agent to receive contributions and make expenditures, the receipt of contributions by that agent is equivalent to the treasurer's receipt. Advisory Opinion "AO" 1992-29. For example, in AO 1992-29, the Commission stated that a committee employee who neglected to deposit contribution checks within 10 days was the committee's agent, and his or her failure to deposit the checks was imputed to the treasurer for purposes of the 10-day deposit requirement. Mr. Rizzo apparently had significant authority over the Committee's finances in addition to acting as chief fundraiser for the campaign. The Committee concedes that at one time, he was in charge of managing the Committee's financial activity from his Andover office. Thus, the line between which actions were within the scope of his agency and which were beyond it is blurred. It appears that Mr. Rizzo did have authority to handle Committee accounts, make expenditures, and raise funds by soliciting and accepting contributions.

Moreover, the Account was in the name of the Committee, contribution checks made payable to the Committee were deposited into the Account and certain legitimate Committee expenses were paid from the Account. It is unclear to what extent the Committee and individual staff members knew about Mr. Rizzo's activities. However, the subpoena responses reveal that

individual lenders met Mr. Rizzo at campaign functions where the candidate and other staff were present, or were introduced to Mr. Rizzo by Steven Joncas, an associate of the candidate. It appears that there was frequent contact between Mr. Rizzo and Committee staff. Arguably, the Committee should have known about the Account.

In addition, there is precedent for holding the Committee responsible for transactions by Mr. Rizzo, even if his activities were in violation of election law and against the Committee's best interests. See Final Audit Report on Wallace Campaign, Inc., (1976) approved August 13, 1979. (Repayment based in part on undocumented expenditures of committee funds deposited by staff person in his personal checking account.) Finally, the Committee's demand that Mr. Rizzo forward all contributions in the Account is inconsistent with its contention that it is not responsible for excessive contributions in the form of loans deposited into the Account. It appears that the Committee is attempting to benefit from contributions in the Account, while avoiding responsibility for any violations related to Account transactions. Therefore, based on the available information, we agree with the Audit Division that the Account should be considered a Committee account, and transactions related to the Account should be included in the Audit findings and the repayment determinations.

2. Excessive Contributions (III. A. 1. and 2. a. i.)

The evidence indicates that Mr. Rizzo solicited loans from eight individuals to the Committee totaling \$794,000, including \$514,000 made payable to the Committee and deposited into the Account, \$200,000 made payable to Mr. Rizzo personally, and \$80,000 deposited into a Benco account. Responses to the Commission's subpoenas from six of the individual lenders and the allegations in the grand jury indictment indicate that all of the loans were intended for the Committee. The proposed Interim Audit Report notes that it appears that six individuals made excessive contributions to the Committee totaling at least \$652,000.^{13/} The proposed report recommends that the Committee demonstrate that the loans were not excessive contributions or

^{13/} The discrepancy between the Audit Division's figures and the total of \$794,000 is due to the fact that the grand jury indictment revealed additional loans from two individuals totaling \$140,000. United States v. Rizzo, No. CR 93-10056-T (D. Mass filed February 22, 1993). We recommend that these loans be included in the Interim Audit Report to be forwarded to the Commission, and in the auditors' repayment calculations.

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repay \$632,000 to the individual lenders within 30 days.^{14/} Moreover, if funds are not available to make the repayments, the Committee should disclose the transactions as loans owed by the Committee. Finally, the Audit Division seeks documentation of the check deposited into the Account on December 4, 1991 totaling \$60,000.^{15/}

We concur with the recommendation. Since the Account was a Committee account, and the loans were solicited ostensibly on behalf of the Committee, the loans should be treated as excessive contributions to the Committee. 2 U.S.C. § 441a(a)(1)(A). According to the subpoena responses and the grand jury indictment, the lenders intended to provide these funds to the Committee, not to Mr. Rizzo. Most of the loans were made payable to the Committee. According to the lenders, the loans made payable to Mr. Rizzo also were intended for the Committee. While the Committee contends that it is not responsible for the loans and that Mr. Rizzo must repay them, the available evidence supports the conclusion that all of the loans, including those made payable to Mr. Rizzo, were intended for the Committee, and thus, were contributions to the Committee in excess of the contributors' individual contribution limitations. Therefore, the loans are Committee debts which must be reported as Committee loans until they are refunded to the lenders.

Moreover, the cover memorandum to the proposed report notes that one of the loans, from Mr. Spinelli for \$20,000, was repaid within 60 days. The Audit staff notes that although the Commission routinely applies the section 103.3 time periods to loans, this situation is unusual, and the loan has been included in the finding as a potential violation.

The regulations specify a period of 60 days for refund or reattribution of excessive contributions. 11 C.F.R. § 103.3(b)(3). This provision applies to excessive contributions in the form of loans. However, although Mr. Spinelli's loan was refunded in less than 60 days, it appears that the contribution was used for disbursements after Mr. Rizzo deposited it into the Account. Under section 103.3(b)(4) of the Commission's regulations, any contribution which appears to be illegal and which is deposited into a campaign depository shall not be used for any disbursements by the political committee

^{14/} Based on the revised figure of \$794,000, and the repayment of \$65,000 by Mr. Rizzo as well as permissible contribution limitations of \$3,500 for several of the lenders, we calculate that the Committee should repay \$725,500 to the individual lenders.

^{15/} Based on the grand jury indictment, it appears that this check was a loan from William Berg. United States v. Rizzo, No. CR 93-10056-T (D. Mass filed February 22, 1993).

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until the contribution is determined to be legal. According to our conversations with the Audit staff, the Account did not consistently maintain sufficient permissible funds to make the \$20,000 refund between October 16, 1991 and December 6, 1991. Therefore, this Office concurs that this loan should be included in the Interim Audit Report, and that this violation should continue to be pursued in the enforcement investigation. MUR 3585.

In addition to the excessive contributions in the form of loans, the Account contained excessive contributions from 42 contributors with excessive portions totaling \$29,314. While the Committee disavows the Account, it has demanded that Mr. Rizzo forward individual contributions. Thus, it appears that the Committee has acknowledged these contributions as Committee funds. The proposed Interim Audit Report recommends that the Committee provide evidence that the contributions were not excessive or make a repayment to the United States Treasury of the excessive amount. We concur with the recommendation.

3. Misstatement of Financial Activity (III. B.)

The proposed Interim Audit Report notes that in its 1991 disclosure reports, the Committee understated receipts by \$705,779 and disbursements by \$860,917 and overstated ending cash by \$155,138. The understatement of receipts and disbursements was primarily due to unreported transactions in the Account. In addition, through April 30, 1992, reported 1992 receipts were understated by \$371,382, disbursements were understated by \$607,367 and cash on hand was overstated by \$391,123. These misstatements were caused in part by Account transactions. The Audit staff recommends that the Committee file a comprehensive amendment which includes the Account transactions and corrects the misstatements. We concur with the inclusion of the Account in the Audit Division's review of reporting errors. This finding is consistent with the treatment of the Account as a Committee account. Since the Account was a Committee account, receipts, disbursements and cash in the Account should be properly disclosed through amendment of the Committee's reports.

4. Repayment - Non-qualified Campaign Expenses
(IV. C. 1. and 3.)

The proposed Interim Audit Report notes apparent non-qualified campaign expenses totaling \$35,118 paid to Mr. Rizzo, Steven Joncas, and Benco for expenses which were not campaign-related or were paid more than once.^{16/} The Audit staff offset this amount against expense vouchers submitted by

^{16/} The repayment ratio for non-qualified campaign expenses is 14.1786%.

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Mr. Rizzo for qualified campaign expenses totaling \$57,100, and recommends no repayment at this time.

Moreover, the Audit staff notes 68 disbursements from the Account totaling \$693,212 which do not appear to be campaign related and/or are not adequately documented. One of these disbursements in the amount of \$10,809 is documented only by the bank statement. Forty of the disbursements totaling \$621,215 were paid to Mr. Rizzo or Benco, but there is no evidence that this amount was actually owed to Mr. Rizzo or his company. An additional 14 disbursements totaling \$39,195 were paid to various banks, apparently as payments on Mr. Rizzo's personal obligations. Finally, 13 payments totaling \$21,993 do not appear to be campaign-related. The proposed Interim Audit Report notes that the amount of undocumented expenditures may be reduced based on additional information or if funds are recovered from Mr. Rizzo. The Audit staff recommends that the Committee submit documentation to demonstrate that the expenses are qualified campaign expenses or that the amounts have been recovered from Mr. Rizzo. Moreover, if the Committee does not submit such documentation, the expenditures will be subject to a pro rata repayment to the United States Treasury of \$98,288. 26 U.S.C. § 9038(b)(2).

The Audit Division's analysis of these repayment issues is based on the premise that non-qualified campaign expenses paid from the Account should be included in the Committee's repayment obligation. We concur that this approach is consistent with the treatment of the Account as a Committee Account. To obtain matching funds, the Committee agreed to supply receipt and disbursement records related to all of its accounts. 11 C.F.R. § 9033.1. Since it appears that the Account was a Committee account and that Mr. Rizzo was authorized to make disbursements by the Committee, the Committee is responsible for providing documentation of disbursements from the Account, and any undocumented disbursements are non-qualified expenses. See 11 C.F.R. § 9033.11.

Moreover, we concur that non-qualified campaign expenses related to the Account are subject to repayment. 2 U.S.C. § 9038(b)(2); 11 C.F.R. § 9038.2(b)(2). The Commission generally considers all accounts of a committee to be a mixed pool of private contributions and federal matching funds for the purposes of repayment. See 11 C.F.R. § 9038.3(c)(2); Kennedy for President Committee v. FEC 734 F.2d 1558, 1559 (D.C. Cir. 1984); Reagan for President Committee v. FEC 734 F.2d 1569 (D.C. Cir. 1984). Thus, if the Account is considered a Committee account, these transactions are subject to repayment.

In a similar situation in a previous audit, the Commission based a repayment determination on undocumented expenditures of committee funds commingled by a staff person with his personal funds. See Final Audit Report on Wallace Campaign, Inc. (1976) approved August 13, 1979. The Commission's repayment

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determination in the audit of the 1976 Wallace campaign was based, in part, on undocumented expenditures made by a campaign staffer who received \$36,900 from the committee, commingled the funds with his personal funds in his checking account, and provided no documentation that his expenditure of the funds was for qualified campaign expenses.^{17/}

We note that Finding IV. C. 3. states that if "any of the funds are recovered from Mr. Rizzo or are shown to be for qualified campaign expenses, the undocumented amount will be reduced accordingly." The recommendation for this finding (# 8) states that the Committee must submit documentation to demonstrate that the expenses are qualified "or that the amounts have been recovered from Mr. Rizzo." Thus, the proposed Interim Audit Report treats recovery of the funds from Mr. Rizzo as equivalent to proving that the expenses are qualified - either action will reduce the amount of the potential repayment. In discussions between staff of this Office and staff of the Audit Division, Audit staff noted that the repayment would not cure the non-qualified campaign expenses for enforcement purposes, but that in cases where money is misappropriated from a committee, there should not be a repayment if the money is recovered.

We concur with the Audit Division that the circumstances surrounding the Account argue for leniency in this case. However, we believe that the Interim Audit Report should not include language concerning the potential effect of any reimbursement by Mr. Rizzo on the Committee's repayment obligations. The possibility that Mr. Rizzo will repay any money to the Committee is improbable at best. Since this issue is hypothetical at this point, it is unnecessary to raise it in the Interim Audit Report. Therefore, we recommend that the proposed Interim Audit Report be revised at Finding IV. C. 3. to delete any reference to a potential reduction of the Committee's repayment based on recovery of funds from Mr. Rizzo.

^{17/} The Wallace audit is similar to the situation here because the individual, Roland Vincent, commingled committee and personal funds and apparently used some of the funds for personal expenses. The Commission did not pursue a compliance action against the Wallace Committee for these transactions because the Wallace Committee repaid the amount advanced to the individual "pursuant to a Commission finding that the sum was not spent on qualified campaign expenditures." MUR 708, General Counsel's Report approved October 10, 1979, Page 1, footnote 1. The Commission found probable cause to believe that Mr. Vincent violated 2 U.S.C. § 432(b) and authorized suit. The United States District Court made a default judgment against Mr. Vincent for \$10,000. FEC v. Vincent, CV-80-1024-TJH (C.D. Cal., Jan. 30, 1981).

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We note that a similar issue arose in the audit of the 1988 Jackson Committee, where the Commission determined that a \$10,000 payment to the candidate was not subject to repayment because the relatively timely reimbursement of funds restored the funds to the committee's account. Final Repayment Determination and Statement of Reasons for the Reverend Jesse L. Jackson, Jesse Jackson for President '88 Committee, et al. approved April 15, 1993.

Nevertheless, the issue raises troubling questions. The Matching Fund Act and the Commission's regulations do not clarify whether a non-qualified campaign expense may be cured for repayment purposes. The Matching Payment Act provides that amounts of public funds used for a purpose other than to defray qualified campaign expenses are subject to repayment. 2 U.S.C. § 9038(b)(2); See 11 C.F.R. § 9038.2. Thus, a repayment is appropriate where public funds are used for non-qualified expenditures. It is not clear whether reimbursement of misappropriated funds can change non-qualified expenses into qualified expenses for purposes of repayment. If a non-qualified campaign expense can be cured simply by reimbursing the Committee the amount of the expense at some later date during the Commission's audit, campaigns could use public funds to make long term loans to candidates and other individuals at will. Moreover, since the Committee was publicly financed, arguably it should be held responsible for failing to adequately control its financial transactions to prevent the misuse of public funds.

5. NOCO and Repayment - Amounts In Excess of Entitlement
(IV. D. and E.)

The Account transactions are reflected in the Committee's Statement of Net Outstanding Campaign Obligations ("NOCO statement") as Accounts Receivable and Loans Payable. The amounts in the proposed Interim Audit Report will be revised based on additional documentation.^{18/} For example, the grand jury indictment has revealed additional loans, which would affect the amount of loans payable and accounts receivable on the NOCO statement. The NOCO statement notes that the Audit staff has not made any determination regarding the collectibility of the Accounts Receivable from Mr. Rizzo. Since it appears improbable that Mr. Rizzo will be able to reimburse the Committee for this amount in the foreseeable future, this amount may be revised at a later stage in the audit process. In addition, although the Committee has expressed unwillingness to repay the loans from the individual lenders, we concur with the Audit Division that the loans are Committee debts which should be included on the NOCO statement.

^{18/} The NOCO statement includes \$4,471 owed to the Secret Service. We disagree that this amount should be treated as a payable. See infra page 28.

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Based on the NOCO statement and subsequent matching fund payments to the Committee, the Audit staff concludes that as of December 31, 1992, the Committee had received matching funds in excess of its entitlement totaling \$60,046 which are subject to repayment. 2 U.S.C. § 9038(b)(1); 11 C.F.R. § 9038.2(b)(1). Since this amount is based on figures which are likely to change, including the receivables from Mr. Rizzo noted above, which may prove uncollectible, the amount of the Committee's entitlement, and any repayment, is subject to change. We concur with the Audit Division's calculation of the repayment amount. Since the Account was a Committee account, the transactions in the Account should be included in the calculation of the Committee's entitlement and any repayment based on receipt of funds in excess of the Committee's entitlement.

II. EXCESSIVE CONTRIBUTIONS - REVIEW OF COMMITTEE'S DATABASE AND SAMPLE REVIEW (III. A. 2. a. iii. and b.)

The Audit staff discovered 34 excessive contributions totaling \$8,642 during a review of receipts in the Committee's database that had been coded as requiring refunds. The auditors' review showed that of these 34 contributions, 27 totaling \$7,312 were refunded, all untimely, by the Committee on June 17, 1992 and June 18, 1992. Five of the remaining contributions were not refunded and 2 were refunded by the Committee, but not cashed by the contributors as of July 31, 1992.^{19/} In further review of receipts on the Committee's database not coded for refund, the auditors identified 6 other contributors who exceeded the limitations by a total of \$1,550.

In addition to the comprehensive reviews of certain limited sources of apparently excessive contributions, the auditors performed a dollar unit sample of the remaining Committee receipts to determine if the Committee accepted a material amount of excessive contributions.^{20/} The sample detected four errors, three associated with the same \$1,500 check and one associated with a \$200 check from a contributor whose aggregate contributions totaled \$1,200. At the exit conference, the Audit staff provided the Committee with the checks appearing in the sample. Subsequent to the exit conference, the Committee submitted documentation to show that the \$200 check was not

^{19/} We note that the two refunded contributions which have not been cashed constitute stale-dated checks repayable under 11 C.F.R. § 9038.6.

^{20/} The Commission notified publicly funded presidential committees of its intent to use sampling in a letter dated June 2, 1992. The letter informed committees that because sampling will not generate a list of donors, excessive contributions must be disgorged to the United States Treasury rather than refunded to contributors.

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excessive. Accordingly, the Audit staff made a new projection based on the three remaining errors in the sample. This projection estimated the total population of excessive contributions to be \$9,419, or .1984% of the dollar value of the contributions tested.

The proposed Interim Audit Report recommends that the Committee provide evidence that these contributions were not excessive, and that previously uncashed refund checks have been cashed, or pay the excessive amounts to the United States Treasury. The proposed report recommends the following apparently excessive contributions, totaling \$71,525, be paid to the Treasury: (1) \$10,192 (including \$7,312 in untimely refunds) identified in comprehensive reviews of the Committee's contributor database; (2) \$9,419 projected on a sample basis; (3) \$21,500 from the partnership of Foley, Hoag & Eliot; (4) \$1,100 deposited into the Committee's Texas account; and (5) \$29,314 deposited into the Andover Bank account.

The Committee contends that the \$7,312 in excessive contributions refunded to contributors in June, 1992 should not be included in the total due to the United States Treasury. The Committee asserts that it was misled by the Commission's June 2, 1992 letter explaining the deadline for refunding excessive contributions. The letter stated: "The Commission will no longer recognize any untimely refunds, redesignations or reattributions made more than 60 days following a candidate's date of ineligibility or after the date of receipt of this letter, whichever is later." The Committee argues that it interpreted this sentence to allow a candidate as long as 60 days after the receipt of the notification letter to make the necessary refunds. Therefore, the Committee contends that the June refunds, while untimely, should be recognized by the Commission as sufficient resolution of the problem and excluded from the Treasury payment.

As stated in the introduction to these comments, this Office concurs with the approach taken by the Audit Division to include both excessive contributions projected from the dollar unit sample and excessive contributions discovered during comprehensive reviews by the Audit staff in the amount payable to the United States Treasury. This Office does not accept the Committee's argument that the letter could be read to allow refunds to contributors as late as 60 days following receipt of the letter. Any ambiguity in that isolated sentence could have easily been resolved from its context in the letter. The letter emphasized throughout the need for timely completion of audits, including the prompt resolution of excessive and prohibited contributions. If all committees are to be treated consistently during the 1992 election cycle, the Commission must stand by the procedures outlined in its June 2, 1992 notification letter, including the requirement that excessive contributions not resolved by the specified deadline be paid to the Treasury.

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III. EXCESSIVE CONTRIBUTIONS - PARTNERSHIP ATTRIBUTION
(III. A. 2. a. ii.)

In the proposed report, the Audit staff notes that 25 partners of the law firm Foley, Hoag & Eliot made contributions on 25 separate checks, all drawn from the same partnership account, totaling \$22,500, or \$21,500 in excess of the \$1,000 limit on contributions by partnerships. None of the separate checks exceeded \$1,000 on its face. At the exit conference, the Committee stated that the campaign had held a fundraiser at the law firm and that 25 partners made contributions from their own shares in the partnership account.^{21/} The Committee subsequently submitted a letter from the executive director of the partnership stating that all the contribution checks were drawn on accounts of the firm at the direction of individual partners. The letter further stated that the contributions were deducted from the specific partners' net income distribution. The Committee also submitted letters from 23 individual donors avowing that the contributions represented "personal funds." The auditors, nevertheless, assert the partnership made an excessive contribution and recommend that the Committee provide evidence that the contribution is not excessive or refund the excessive amount to the United States Treasury.

A contribution by a partnership shall be attributed to the partnership as an entity, as well as to each individual partner. 11 C.F.R. § 110.1(e).^{22/} This dual attribution rule is meant to ensure that members of a partnership do not enjoy a second contribution ceiling not available to contributors who do not belong to a partnership. See Explanation and Justification for 11 C.F.R. § 110.1(e), 52 Fed. Reg. 755 (January 9, 1987). The Commission has determined that excessive partnership contributions result if the donated funds were in the control of the partnership. For instance, in MUR 2072, the Commission found reason to believe that an excessive contribution was made when Hansell & Post transmitted a \$2,700 partnership check to the 1984 Glenn presidential campaign. In 1988, the Dukakis for President Compliance Fund, in response to the Interim Audit Report, refunded \$9,000 of a \$10,000 check drawn on a partnership account and attributed to 12 individuals. However, the Commission has decided that partnership contributions did not result when a partnership check represented a check-off from firm accounts of individual partners. See, e.g., MUR 1669 (\$60,500 in contributions transmitted to pay administrative expenses of partnership-sponsored political action committee) and Advisory Opinion 1982-63 (law firm's PAC allowed to withhold

^{21/} The candidate is a partner in this firm, but was not one of the 25 contributors.

^{22/} The definition of "person" includes a partnership; therefore, a partnership can contribute no more than \$1,000 per federal candidate per election. 2 U.S.C. § 431(11).

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specified amount from partners' shares of firm profits). It is important to note that these cases involved contributions to partnership-sponsored political committees rather than contributions to candidate committees. These cases also predate the Commission's reaffirmation of the dual attribution rule in 1987.

The letters submitted by the Committee do not provide sufficient evidence that the funds contributed out of Foley, Hoag & Eliot accounts were the sole property of the individual partners. For example, we do not know whether the partnership places any restrictions on partners' deductions from the firm accounts or whether the net income distributions are ever repayable to the partnership. Therefore, we recommend that the proposed Interim Audit Report be revised to request additional evidence from the Committee regarding the partnership's payment structure to show that the funds contributed were within exclusive control of the individual partners.

IV. EXCESSIVE CONTRIBUTIONS RESULTING FROM STAFF ADVANCES,
TEXAS OFFICE (III. A. 3. a. and III. A. 3. b. ii.)

Expenditures made on behalf of a political committee from personal funds, or advances, are contributions unless they fall within an exemption from the definition of contribution outlined in 11 C.F.R. § 100.7(b). 11 C.F.R. §§ 116.5(b)(1) and (2). Advances are not considered contributions if they are for an individual's personal transportation expenses, and for usual and normal subsistence expenses of an individual who is not a volunteer, where such expenses are incurred while the individual is traveling on behalf of a candidate or party committee. Explanation and Justification for 11 C.F.R. § 116.5, 55 Fed. Reg. 26383 (June 27, 1989). This exemption only applies, however, if the individual's transportation and subsistence expenses are reimbursed within sixty days if the advance was paid by credit card transactions or thirty days in other cases. Id.

An in-kind contribution will result if an individual pays the transportation or subsistence expenses of others or pays other types of campaign expenses, such as the costs of meeting rooms or telephone services, regardless of how long the reimbursement takes. Id. The committee would be required to report the amounts advanced in excess of \$200 as in-kind contributions if not reimbursed during the same reporting period as incurred. See Advisory Opinion 1992-1. If the original advance exceeded \$500 or was outstanding for more than 60 days, the committee must also report the amount as a debt owed. Id.; 11 C.F.R. § 104.11.

This is the first presidential election cycle for which 11 C.F.R. § 116.5 has been in effect. In the cover memorandum to the proposed report, the auditors state that it was necessary to limit the number of individual files analyzed so that resources

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could be efficiently applied. Therefore, only individuals who received one or more expense reimbursements in excess of \$1,000 were included in the review. See Cover Memorandum to the Tsongas Interim Audit Report, dated November 10, 1992. On March 2, 1993, the Commission approved the operational guidelines for the application of 11 C.F.R. § 116.5 to the 1992 audit process. According to the guidelines only those individuals who have received one or more reimbursements of at least \$2,000 and who have aggregated reimbursements of \$10,000 or more will be included in the review.

The Audit staff has informally advised us that the revised finding will involve four individuals, including the Committee's state chairman for Texas. This individual apparently paid \$15,892 in expenses to cover the opening of the Committee's Texas office and was reimbursed on February 27, 1992. The Audit staff could not determine when the expenses were incurred. Another of the four individuals who will remain in the finding after application of the thresholds is campaign business manager David Goldman. He apparently charged \$32,658 in hotel and other campaign expenses on his credit card during the Democratic National Convention in New York and was reimbursed by the Committee 10 or 11 days later.

At the exit conference, Committee representatives stated that the Committee's policy was to make prompt reimbursements, but that the delays were caused by individuals submitting expense claims in an untimely manner. In addition, the Committee asserted that its policy was to make reimbursements only when individuals provided sufficient documentation that the advance payment constituted a qualified campaign expense.^{23/} In a September 14, 1992, response to the issues presented at the exit conference, the Committee disagreed that advances for convention expenses resulted in an excessive contribution. The Committee purportedly believed that because campaign official David Goldman's own hotel costs were included in the bill, he could charge the entire amount on his credit card and receive reimbursement within 60 days under 11 C.F.R. § 116.5(b)(2). The Committee argued that it had a "good-faith basis" for

^{23/} The Committee apparently ignored this policy when reimbursing the \$32,658 in convention-related expenses advanced by a staff member. In response to a Committee inquiry, the Office of General Counsel and the Audit staff both advised the Committee before the Democratic National Convention that convention expenditures would be non-qualified campaign expenses because the convention was held after Senator Tsongas' date of ineligibility.

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interpreting section 116.5(b) as not limiting "usual and normal subsistence expenses" to those of the person making the advance. In addition, the Committee stated that "the proposed advance by Mr. Goldman was presented to and expressly approved by members of the Audit staff prior to the payment in question." The auditors state that they were not aware of Mr. Goldman's intent to charge the Committee's convention-related expenses on his personal credit card.

The proposed Interim Audit Report recommends that the Committee provide evidence to show that the staff advances do not constitute excessive contributions. The auditors also recommend that the Committee prove that funds advanced in connection with the Texas office did not constitute an excessive contribution. We concur generally with the Audit Division's recommendations. In particular, this Office agrees that the advances by David Goldman for convention expenses constituted excessive contributions. The Committee's argument that the inclusion of Mr. Goldman's own subsistence costs brings the entire \$32,658 under the section 116.5 exemption is not convincing. The Explanation and Justification for 11 C.F.R. § 116.5 explicitly states that "an in-kind contribution will result if an individual pays transportation or subsistence expenses of others or pays other types of campaign expenses . . . regardless of how long reimbursement, if any, takes." 55 Fed. Reg. 26382 (June 27, 1989). Moreover, the Commission considers contributions by credit cards to be received by a committee on the date the contributor authorizes the charge to be made. See AOs 1991-1 and 1990-4. In this case, Mr. Goldman contributed \$32,658 to the Committee on the date his credit card was charged for the convention-related expenses. The reimbursement received from the Committee 10 or 11 days later was not timely. In addition, we agree that advances by the Texas state chairman for the purpose of opening a state office for the Committee were excessive contributions.

We note that the proposed Interim Audit Report fails to include a recommendation concerning apparent excessive contributions resulting from \$57,100 in advances made on behalf of the Committee by Mr. Rizzo. See supra pages 8 and 13. The proposed report notes in Finding II. A. 4. that during the spring of 1992 Mr. Rizzo sought reimbursement from the Committee for expenses totaling \$82,634, which had been incurred between May of 1991 and February of 1992. According to the Audit staff's review, \$57,100 in advances made by Mr. Rizzo were for legitimate campaign expenses, including payments to caterers, hotels and two payments to the Committee's printer totaling \$31,754. As documentation for these expenses, Mr. Rizzo included copies of canceled checks drawn on his personal account. The amounts advanced by Mr. Rizzo from his personal account appear to be excessive contributions which do not fall within the narrow parameters of the 11 C.F.R. § 116.5(b) exemption for personal transportation and subsistence expenses reimbursed in a timely manner. We note that in informal

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discussions with our Office, the Audit staff has asserted that section 116.5 should not be applied to Mr. Rizzo because he diverted sufficient funds intended for the Committee to cover his advances. However, we believe that Mr. Rizzo's apparent failure to forward contributions and his commingling of personal and Committee funds in the Andover account are separate issues which do not preclude a finding under section 116.5. Therefore, we suggest that the Audit staff recommend that the Committee provide evidence to show that the \$57,100 in advances by Mr. Rizzo do not constitute excessive contributions.

V. EXCESSIVE CONTRIBUTIONS - ADVANCES BY LAW FIRM
(III. A. 3. b. i.)

The Audit staff found that the New York law firm of Armenakis & Armenakis ("Armenakis") made advances for goods and services on behalf of the Committee in connection with efforts by Senator Tsongas to have his name placed on the primary ballot in New York. One of the named partners, James J. Armenakis, administered the Committee's New York office from the basement of the law firm's building. Mr. Armenakis and two other Committee representatives directed the campaign effort to collect nearly 14,000 signatures. The proposed report notes that Armenakis provided documentation and billed the Committee for a total of \$45,411 for goods and services rendered by the firm, but unrelated to legal work. The Committee reimbursed Armenakis in the amount of \$31,416, leaving an unpaid balance of \$13,995.^{24/} The advances were made with partnership checks, and reimbursements were made payable either to Mr. Armenakis or the law firm, according to the auditors. Given the \$1,000 contribution limitation, the Audit staff concludes that an excessive contribution of \$12,995 has resulted.

The Committee contends that it refused to reimburse Armenakis for expenses that were not related to the campaign or not sufficiently documented, including the \$6,000 phone bill. The Committee also claims that it does not owe any more money to Armenakis. As evidence, the Committee has provided the auditors with a September, 1992 invoice from Armenakis showing no outstanding obligation and purporting to "supersede all invoices previously sent."

The law firm also represented the Committee against a court challenge of the Committee's signatures by third party presidential candidate Lenora B. Fulani. The firm billed the Committee in the amount of \$15,596 for legal services and travel expenses for an attorney who represented the Committee in court. Committee representatives stated that the campaign negotiated a flat fee of \$15,000 for the legal services, the remainder of the

^{24/} This amount includes a \$6,000 telephone bill discussed in a memorandum from Mr. Armenakis to the Committee, but never submitted for reimbursement.

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petition defense work being donated by the law firm. At the exit conference, the Audit staff informed the Committee that legal services provided in connection with the ballot challenge would not constitute costs of complying with the Act, 26 U.S.C. § 9031 et seq., or the Commission regulations, and therefore would not be exempt from the definition of contribution. See 11 C.F.R. § 100.7(b)(14); see also Dukakis-Bentsen Final Audit Report, approved November 22, 1991 (electoral college memorandum was not compliance cost). The Audit staff maintains that the outstanding amount of \$596 constitutes an in-kind contribution by Mr. Armenakis, which results in an excessive contribution of \$13,591 when aggregated with the non-legal services.

In the proposed Interim Audit Report, the Audit staff recommends that the Committee provide evidence that the \$13,591 is not an excessive contribution or show that the amount due has been paid to the Armenakis firm. The auditors also recommend that the Committee explain any legal services volunteered by the firm in connection with the petition challenge and provide a billing statement from Armenakis detailing the cost of such services.

We agree with the Audit staff that the original invoices submitted by the law firm indicate that Armenakis paid Committee expenses without receiving full reimbursement. The provision of goods and services without charge or at less than the usual and normal charge is an in-kind contribution subject to the limitations of 2 U.S.C. § 441a(a), 11 C.F.R. § 100.7(a)(1)(iii). Moreover, 11 C.F.R. § 116.3(a) states that an extension of credit will not be considered a contribution if extended in the ordinary course of the commercial vendor's business and on terms substantially similar to extensions of credit made to nonpolitical debtors. Because Armenakis & Armenakis was not in the business of providing non-legal services, the extension of credit to the Committee would be considered a contribution.^{25/} The Commission considered a similar situation involving the Gephardt for President Committee. On February 25, 1992, the Commission rejected the Gephardt for President Committee's proposal to settle debts with several law firms which provided non-legal services to the campaign. The Commission also required the Gephardt Committee to report the resulting in-kind contributions and expenditures. See DSR #90-16 and MUR 3342. Although the Gephardt case was decided under the previous debt settlement rules, we believe the same analysis would apply under 11 C.F.R. part 116.

In addition, expenses paid by Mr. Armenakis on behalf of the Tsongas campaign, and not reimbursed by the Committee,

^{25/} The proposed audit report states that Armenakis exceeded the \$1,000 contribution limit by amounts ranging from \$2,980 to \$22,611 for provision of goods and services not related to legal work with Committee reimbursement taking from 2 to 112 days.

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appear to constitute excessive in-kind contributions by both the Armenakis & Armenakis partnership and by the individual partners under 11 C.F.R. § 110.1(e). We recommend that the Audit Division include this apparent violation in the proposed Interim Audit Report.

VI. MEDIA AND SECRET SERVICE REIMBURSEMENTS (IV. B.)

In the proposed Interim Audit Report, the Audit staff found that the Committee received \$20,262 in excess of the maximum amount it was allowed to bill news reporters who traveled with the campaign.^{26/} This finding included billings for six trips chartered for the Committee by their travel agency, American Express, during February and March of 1992. American Express arranged aircraft, ground transportation, food and lodging. American Express personnel also traveled with the press to track passengers and to provide billing and collection services for the Committee. The auditors found that American Express added a 20% markup to the actual cost of each trip and divided that amount by the number of Committee staff, Secret Service officers and reporters aboard the plane. The resulting pro rata cost was charged to the reporters who traveled with the candidate. The travel agency billed media organizations a total of \$402,850 for the six trips and collected \$387,158 from them as of July 2, 1992.

Under 11 C.F.R. § 9034.6, a publicly funded committee is allowed to bill a media representative up to 110% of his or her pro rata share of the actual cost of the transportation and services provided. The Commission calculates the pro rata share by dividing the total cost of the transportation and services by the total number of individuals aboard. 11 C.F.R. § 9034.5(b). A committee must refund any media reimbursements received that exceed the actual pro rata costs, plus the 10% markup allowed for administrative costs. 11 C.F.R. § 9034.6(d). Administrative costs are defined as costs incurred by the committee for making travel arrangements and seeking reimbursements, whether performed by committee staff or independent contractors. 11 C.F.R. § 9034.6(d)(2).

The proposed Interim Audit Report states that American Express failed to include its representative who traveled on the plane when calculating the reporters' pro rata share of the actual travel costs under 11 C.F.R. § 9034.6(b). Moreover, the Audit staff notes that the travel agency's 20% commission exceeds the 10% markup permitted by the regulations. The Audit Division recalculated the press billings and determined that the pro rata cost to the press for the six trips totaled \$333,542.20. By adding 10%, the auditors arrived at a maximum

^{26/} The costs of chartered aircraft billed by the Committee to the press and Secret Service also affect the Committee's misstatement of financial activity (III. B.)

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billable amount of \$366,896 (\$333,542 + 33,354). The auditors subtracted this maximum billable amount from the amount reimbursed by the press to the Committee, resulting in \$20,262 (\$387,158 - 366,896) to be refunded to the press.

At the exit conference, the Committee's business manager stated that he disagreed that the campaign overbilled the press. He expressed the belief that the Committee was being penalized because the travel agency broke out a 20% markup in its billing records. The Committee provided a written explanation of the American Express billing system, which characterized the 10% commission charged to the press as standard in the industry and part of the actual cost of providing transportation and services. A letter from the Committee to the travel agency submitted to the Audit Division showed that the Committee asked American Express to add a second 10% onto the press billings as an administrative fee. The Committee also asserted that the travel agent aboard the plane "was facilitating the use of the plane for media, US Secret Service and for committee passengers. The Amex representative's role in the plane was to provide services and not as a recipient of such."

The Audit staff rejects the Committee's arguments and recommends that the Committee provide evidence that it did not overbill the press by \$20,262 or refund that amount, plus any additional amounts received by the Committee since July 2, 1992, to the appropriate media organizations and document such refunds for the Commission. This Office concurs with that recommendation because the Committee failed to calculate its press billings in accordance with 11 C.F.R. § 9034.6 and Commission precedent. See, e.g., Bush-Quayle Statement of Reasons, approved June 23, 1992; Dukakis-Bentsen Final Audit Report, approved November 22, 1991. One purpose of limiting media reimbursements to 110% of the actual cost of candidate-supplied transportation is to prevent media subsidization of presidential campaigns. See Explanation and Justification of 11 C.F.R. § 9004.6(b), 45 Fed. Reg. 43,376 (June 27, 1980). Any reimbursements received that exceed 110% of a committee's actual costs must be refunded to the media organizations on a pro rata basis. See Explanation and Justification of 11 C.F.R. § 9034.6(d), 56 Fed. Reg. 35906 (July 29, 1991).

The Committee miscalculated the amount charged to the media in two ways. First, the actual cost of the transportation and services should not include the commission charged by a travel agency. That commission represents administrative costs incurred by the Committee for the travel agent's efforts in arranging travel and seeking reimbursements. Section 9034.6(d)(2) states that it makes no difference whether these administrative tasks are performed by independent contractors or in-house staff. When travel managers were included in the direct costs of transportation for 1988 committees, the Commission acknowledged that under the 1992 rules such travel

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managers would be considered an administrative expense. See Open Session Consideration of Bush-Quayle Final Audit Report (October 3, 1991).

Second, the calculation of reporters' pro rata shares is to be performed using the total number of passengers, including any representatives of the travel agency aboard the plane. Section 9034.6(b) was revised for the 1992 election cycle to explain that the total number of individuals to whom such transportation or services were made available includes committee staff, media personnel, Secret Service, national security staff and any other individuals traveling with the candidate. Explanation and Justification for 11 C.F.R. § 9034.6, 56 Fed. Reg. 35906 (July 29, 1991).

With regard to the Secret Service, the Audit staff determined that the Committee received \$49,567 to cover the travel costs of agents accompanying the candidate. At the exit conference, the Committee stated that it had reached an agreement with the Secret Service regarding travel costs. However, the auditors determined that \$45,096 was the correct billable amount, representing the lesser of first class airfare or the pro rata travel cost. The auditors contend that the Committee miscalculated the pro rata costs owed by the Secret Service by including a 10% administrative fee. Consequently, the Audit staff recommends that the Committee provide evidence the agents were not overbilled or refund \$4,471 to that agency. The auditors also include that amount as an account payable to the Secret Service in the Committee's NOCO statement.

This Office disagrees with the Audit staff's finding regarding campaign travel by the Secret Service. The Commission's regulations do not address whether a presidential committee may charge the Secret Service for administrative expenses. See 11 C.F.R. § 9034.6. Section 9034.6(a) allows presidential committees to incur expenses to make transportation available to the Secret Service and national security staff. Such expenditures are qualified campaign expenditures, but are not subject to the overall spending limitation. Id. References to expenditures for travel and services provided to the Secret Service were deleted from Commission regulations in 1983 as other federal regulations govern payment of those expenditures. Explanation and Justification for 11 C.F.R. § 9034.6, 48 Fed. Reg. 5229 (February 4, 1983). Moreover, 1991 regulatory revisions do not affect the amount Secret Service and national security staff must pay committees for transportation and services because that is established by other federal agencies. Explanation and Justification for 11 C.F.R. § 9034.6, 56 Fed. Reg. 35906 (July 29, 1991). Because the Commission's regulations do not establish a maximum billable amount for Secret Service agents, we request clarification from the Audit staff regarding the basis for its determination that the Secret Service was overbilled.

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Even if the Committee did overbill the Secret Service, we do not believe that the Matching Payment Act, the FECA or the Commission's regulations require the Committee to refund the \$4,471. See NUR 3385 (On July 28, 1992, the Commission found RTB that Bush-Quayle violated 11 C.F.R. § 9004.6 and agreed to forward information on possible overbilling to the Secret Service.). Consequently, the Commission is only in a position to inform the Secret Service of apparent overbillings. This Office believes the Audit staff should not provide such information to another agency until the Committee has had a chance to respond to the Interim and Final Audit Reports and to demonstrate that no overbilling occurred. In addition, we do not believe that the \$4,471 should remain a payable on the Committee's NOCO statement because it is not within the Commission's purview to require committees to refund money to the Secret Service.

VII. NON-QUALIFIED CAMPAIGN EXPENDITURES - CONVENTION
(IV. C. 2.)

The proposed report includes a finding that the Committee spent \$74,531 for Senator Tsongas and campaign personnel to attend the Democratic National Convention from July 13, 1992 to July 16, 1992.^{27/} These expenses were incurred after the candidate's date of ineligibility. Therefore, the Audit Division recommends that the Committee submit documentation to demonstrate that the convention costs were qualified campaign expenses or make a pro rata repayment to the United States Treasury of \$10,567.

We concur with the Audit staff's recommendation.^{28/} Any expenses incurred after a candidate's date of ineligibility are not qualified campaign expenses except to the extent that they are winding down costs. 11 C.F.R. § 9034.4(b)(3). Section 9034.4(a)(3) considers costs associated with the termination of political activity, such as the costs of complying with the post-election requirements of the FECA and administrative costs such as rental of office space, to be qualified campaign expenses. However, the Commission has rejected the argument that convention expenses constitute winding down costs. See Final Audit Report on Gore for President, approved July 13, 1989

^{27/} Convention expenses are also related to Audit finding III. A. 3. a. on excessive contributions resulting from staff advances.

^{28/} We also note that on May 8, 1992, the Committee's counsel, Tony Sutin, called this Office to ask whether any actions taken by the Tsongas campaign, for example delegate meetings or platform votes, at the national party convention could convert post-eligibility convention expenses into qualified campaign expenses. This Office advised him that convention-related expenditures are not considered winding down costs.

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(finding \$13,330 in convention-related expenses to be non-qualified campaign expenses); see also Legal Comments on Final Audit Report on Americans for Robertson, Inc., dated October 30, 1991, and cases cited therein.

VIII. CATALDO MONEY ORDERS

According to a story in the Boston Globe on November 23, 1992, Beth Cataldo, the Committee's finance director, was fired in December, 1991, after being involved in a scheme to funnel an illegal \$10,000 contribution into the campaign coffers. "A Controversy Averted in '91", Boston Globe. The article states that Ms. Cataldo asked a number of campaign workers to sign money orders paid for by one individual in order to fake numerous \$250 contributions. Ms. Cataldo picked up 40 \$250 money orders from the Mercantile Bank & Trust in Boston, apparently paid for by James T. Lichoulas Jr., a Tsongas supporter. Ms. Cataldo returned to the campaign and asked campaign staff to sign the money orders. After Ms. Cataldo had obtained signatures from at least a dozen people, a suspicious staffer complained to the campaign manager, who immediately fired Ms. Cataldo.^{29/} The article notes that it is not clear whether the money was Mr. Lichoulas' personal funds or money from individual contributors who had not been able to sign the money orders in time. Mr. Lichoulas had already contributed \$1,000 to the Committee.

The initial draft Interim Audit Report sent to this Office did not include this transaction. The cover memorandum to the revised Interim Audit Report, dated February 8, 1993, summarizes the article and suggests that the matter be considered "in the compliance track." The cover memorandum states that the transactions left no apparent record in Committee files and the matter was not identified in the audit. The Audit Division concludes that violations occurred and more serious violations were intended, but the matter is "not properly treated in the Audit report."

If the allegations in the article are true, this transaction involved a number of inchoate violations, including an excessive contribution, contributions in the name of another, and an attempt to obtain matching funds under false pretenses, all organized by a campaign official and aided by a number of other staffers who signed the checks. 2 U.S.C §§ 441a(a)(1)(A); 441f. It appears, however, that the Committee did not deposit the money orders, and did not submit them for matching payment. Thus, the primary violation appears to be an excessive contribution which was accepted by the Committee, albeit remedied expeditiously. It appears that Ms. Cataldo, as a Committee officer, accepted the contribution in violation of 2

^{29/} However, Ms. Cataldo later worked for the campaign as a volunteer advance person.

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U.S.C. § 441a(f). Moreover, since several campaign staff did sign the money orders, arguably contributions in the name of another occurred. 2 U.S.C § 441f.

We disagree with the Audit Division's reasoning for not including this matter in the Interim Audit Report. Although this matter first came to our attention through a newspaper article, there is no reason why it cannot be included in the audit process. Since the transaction involved Committee staff, the Committee should be able to provide additional information about this matter. We believe that the Committee should provide additional information and documentation to clarify the facts surrounding this transaction. For example, the Committee should provide additional information about the source of the contributions, Ms. Cataldo's attempt to obtain signatures on the money orders from other staff members, the identity of staff who agreed to sign the money orders, and the identity of staff who notified the campaign manager of the transaction. Moreover, the publicly released Final Audit Report should provide a complete and accurate picture of all of the Committee's financial transactions, including this one. Therefore, we recommend that this matter be included in the proposed Interim Audit Report as a finding with the recommendation that the Committee provide additional information and documentation.

IX. SUNSHINE RECOMMENDATION

The Commission's Sunshine Act procedures provide that the Office of General Counsel make Sunshine recommendations on documents submitted to this Office for review. Section 2.4(a) of the Commission's Sunshine Act regulations provides for the consideration of matters in closed session if they are specifically exempted from disclosure by statute. Additional bases for closing such meetings, include when an open meeting is likely to result in the disclosure of non-public audit procedures, policies or investigative techniques or information the premature disclosure of which would be likely to have an adverse effect on the implementation of a proposed Commission action. 11 C.F.R. §§ 2.4(b)(1) and 2.4(b)(6).

This Office believes that Commission discussion of this document should be conducted in closed session. The Commission may eventually decide to pursue an investigation of matters contained in the report. Moreover, the Committee has not had an opportunity to respond to the audit report. Disclosure of the audit report at the interim stage would be premature. Therefore, we believe that sections 2.4(a) and 2.4(b)(6) of the Commission's Sunshine Regulations provides a sufficient basis for exempting from disclosure the Commission's deliberations at this stage of its consideration of the proposed report.

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FIRST GENERAL COUNSEL'S REPORT **SENSITIVE**

LRA #424

STAFF MEMBER: James S. Portnoy
Jane J. Whang

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

RESPONDENTS: Beth A. Cataldo
James T. Lichoulas, Jr.

RELEVANT STATUTES: 2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
2 U.S.C. § 441f

INTERNAL REPORTS CHECKED: Audit Documents

FEDERAL AGENCIES CHECKED: Department of Justice

I. GENERATION OF MATTER

On May 25, 1993, in connection with its consideration of the Interim Audit Report on The Tsongas Committee, Inc. ("the Tsongas Committee" or "the Committee"), the Commission directed the Audit Division to refer a newspaper article reporting possible violations of federal law and Commission regulations to the Office of General Counsel for review. See Certification: Interim Audit Report on The Tsongas Committee, Inc. (May 25, 1993) (Attachment 1); S. Leigh and S. Kurkjian, A Controversy Averted in '91, Boston Globe, November 23, 1992 (Attachment 2). This report contains recommendations based upon our review of the allegations contained in the article, information obtained in connection with the audit of the Tsongas Committee and MUR 3585, and information provided by the Department of Justice.

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II. FACTUAL AND LEGAL ANALYSIS

A. Background

The Federal Election Campaign Act ("the Act") provides that no person shall make contributions to a candidate for federal office and his authorized political committees which, in the aggregate, exceed \$1,000. 2 U.S.C. § 441a(a)(1)(A). The Act further provides that no political committee or officer or employee of a political committee shall knowingly accept a contribution in violation of the foregoing contribution limitation. 2 U.S.C. § 441a(f).

Additionally, the Act provides that no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution by one person in the name of another person. 2 U.S.C. § 441f.

In July 1991, the Committee promoted a campaign staff member, Beth A. Cataldo, to the newly-created position of Director of Fundraising. Ms. Cataldo worked in the Committee's Boston office. Prior to Ms. Cataldo's hiring, Nicholas Rizzo coordinated Committee fundraising from an office in Andover, Massachusetts.^{1/} Ms. Cataldo was hired to supplement Mr. Rizzo's activities and, in particular, to broaden the Committee's

^{1/} On October 13, 1993, Nicholas Rizzo pleaded guilty to federal charges including, inter alia, violations of the FECA. Mr. Rizzo currently is incarcerated in federal prison. His activities as chief fundraiser for the Tsongas Committee are under investigation by this Office in NUR 3585. As yet, we have not discovered any connection between the activities described in this report and the activities leading to Mr. Rizzo's incarceration.

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fundraising base and to build a national finance committee. In December 1991, Ms. Cataldo was discharged by Dennis Kanin, the campaign manager for the Tsongas Committee. As reported in the Boston Globe, the events that led to Ms. Cataldo's discharge appear to involve violations of the Act.

The Boston Globe article stated that the Tsongas campaign was undergoing serious financial difficulties in December 1991. Attachment 2. According to the article, late that month, Ms. Cataldo went to the Mercantile Bank & Trust ("Mercantile Bank") in Boston and picked up an envelope that reportedly contained forty sequential, unsigned, blank money orders for \$250 each -- a total of \$10,000.^{2/} Id. (Attachment 2). The envelope had been left for Ms. Cataldo by James T. Lichoulas, Jr., a long-time Tsongas supporter. Mr. Lichoulas was a real estate developer based in Reading, Massachusetts, and served as a director of the Mercantile Bank. Id. (Attachment 2).

The article further stated that when Ms. Cataldo returned to the Committee's office, she solicited Committee staffers to sign their names to the blank money orders, and that several staffers did so. Attachment 2. In addition, the article reported that Ms. Cataldo was fired for her actions and that the money orders were not deposited in the Committee's accounts. Id. (Attachment 2).

^{2/} As discussed in section II.B., *supra*, the envelope actually contained thirty-eight blank money orders, each for \$250, totaling \$9,500.

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B. Subsequent Events

On August 25, 1994, Mr. Lichoulas signed a Plea Agreement (Attachment 3) in which he agreed to plead guilty to a one count Information (Attachment 4) arising out of the events reported in the Boston Globe article. In general, the Information charged Mr. Lichoulas with scheming to cause the Tsongas Committee to provide false information to the Commission, in violation of 18 U.S.C. § 1001. More specifically, the Information charged that, on December 30, 1991, Mr. Lichoulas procured 38 blank money orders, each in the amount of \$250, totaling \$9,500, and provided them to the Tsongas campaign. Information at ¶¶ 13-14 (Attachment 4). The Information further charged that Mr. Lichoulas intended the money orders to be filled out by others, thereby concealing the fact that he made the contributions and permitting the Committee to seek matching funds based on the contributions.^{3/} Id. at ¶ 14 (Attachment 4). Finally, the Information charged that Mr. Lichoulas "knowingly and willfully" concealed the "true source of a \$9500 campaign contribution [to] the Tsongas campaign" Id. at ¶ 15 (Attachment 4). By his guilty plea, Mr. Lichoulas will be admitting that these charges are true.

In return for Mr. Lichoulas' guilty plea, the U.S. Attorney for the District of Massachusetts agreed to recommend that Mr. Lichoulas be sentenced to one year probation; pay a \$5,000 fine;

^{3/} It should be noted that \$250 is the maximum amount of a contribution that is subject to matching. See 26 U.S.C. § 9033(b)(4); 11 C.F.R. § 9034.2(a)(2).

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and pay a \$50 mandatory special assessment. Plea Agreement at ¶ 3 (Attachment 3). Mr. Lichoulas has not yet entered his plea to the charge in the Information, although the U.S. Attorney's office expects that he will do so shortly.^{4/}

C. Discussion

The Information charging Mr. Lichoulas and deposition testimony taken in connection with MUR 3585 generally confirm the accuracy of the Boston Globe article. The Information contains little detail. However, it does correct an apparent error in the article, clarifying that Mr. Lichoulas provided Ms. Cataldo with thirty-eight money orders totaling \$9,500, not forty money orders totaling \$10,000.^{5/} Information at ¶¶ 13-14 (Attachment 4). The Information also explains that the funds for the money orders came from Mr. Lichoulas' account at Mercantile Bank. Id. at ¶ 13 (Attachment 4).

The deposition testimony, by contrast, provides substantial additional detail, particularly with respect to Ms. Cataldo's actions. The testimony indicates, for example, that Ms. Cataldo had expended considerable energy trying to convince Mr.

^{4/} The Plea Agreement contemplates that the Commission may take civil action against Mr. Lichoulas, and states that it does not "compromise any civil liability . . . that may be imposed by the Federal Election Commission" as a consequence of Mr. Lichoulas' conduct or his guilty plea. Plea Agreement at ¶ 6 (Attachment 3).

^{5/} It appears that Mr. Lichoulas procured only thirty-eight money orders because two additional money orders would have raised the total amount of the transaction to \$10,000 -- which Mr. Lichoulas apparently (albeit mistakenly) believed would have caused the Bank to file a currency transaction report with the Treasury Department. See Currency and Foreign Transactions Reporting Act, 31 U.S.C. § 5313.

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Lichoulas to raise money for the Committee, and may initially have considered the money orders to be the product of her efforts.^{6/} Kanin at 103 (Attachment 5).^{7/} Indeed, in explaining her actions to Dennis Kanin, the campaign manager, Ms. Cataldo claimed that Mr. Lichoulas told her that she would be picking up contribution checks from a number of different individuals, and that she did not discover that the envelope contained blank money orders until she returned to the Committee's office. Id. 101-02 (Attachment 5).

Ms. Cataldo's assertion that she did not examine the envelope's contents until she returned to the office is unconvincing, and would not be exculpatory even if it were true. Whenever Ms. Cataldo realized that the envelope contained blank money orders, upon returning to the office, she successfully solicited campaign staffers to sign their names to the blank money orders. Kanin at 101 (Attachment 5); Wong at 72 (Attachment 6); see also information at ¶ 14 (Attachment 4).

Moreover, at least some staffers objected to Ms. Cataldo's actions and sought assistance in stopping her. These staffers asked Mary Wong and David Goldman, the Committee officials who processed contributions and expenditures, to intercede. Goldman at 77 (Attachment 7); Wong at 75 (Attachment 6). Mr. Goldman

6/ Commission records indicate that Lichoulas contributed \$1,000 to the Tsongas Committee on April 12, 1991 -- prior to the events discussed in this report.

7/ Citations refer to the depositions of Dennis Kanin, Mary Wong and David Goldman, which were taken by this Office in connection with HUR 3585. See note 1, *infra*. Excerpts from those depositions are attached as Attachments 5-7, respectively.

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then confronted Ms. Cataldo and advised her to stop soliciting signatures because it was improper to do so. Goldman at 78 (Attachment 7). Ms. Cataldo flatly refused to stop. Id. (Attachment 7). Some time later, Mr. Goldman tried again to dissuade Ms. Cataldo from soliciting signatures. She again refused to stop. Id. at 78, 80 (Attachment 7). Thereafter, Mr. Goldman ceased his efforts to stop Ms. Cataldo directly, but instead left an urgent phone message for Mr. Kanin. Id. (Attachment 7).

As noted, despite several warnings, Ms. Cataldo continued to solicit staff members to sign the money orders, which she then conveyed in batches to Ms. Wong. Wong at 73 (Attachment 6). Upon receiving the signed money orders, Ms. Wong reviewed them and noted that they bore sequential numbers. Id. (Attachment 6) Because Ms. Cataldo's actions and the sequential numbering of the money orders concerned her, rather than deposit the money orders, Ms. Wong placed them in a drawer, intending to give them to Mr. Kanin the next day when he came to the office. Id. at 74 (Attachment 6).

Later that day, Mr. Kanin called the office and learned of Ms. Cataldo's actions. He spoke with Ms. Cataldo, and advised her that he would come to the office immediately to discuss the matter. Kanin at 100 (Attachment 5). When Mr. Kanin arrived at the office, however, Ms. Cataldo already had left. Id. (Attachment 5). The next morning Mr. Kanin fired Ms. Cataldo. Id. at 102, 104 (Attachment 5).

At Mr. Kanin's instructions, the signed money orders were

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collected from Ms. Wong's desk and returned to Mr. Lichoulas along with the remaining unsigned money orders. Kanin at 104 (Attachment 5); see also information at ¶ 14 (Attachment 4). They were never deposited in the Committee's account. Id. (Attachment 5).

Mr. Kanin testified that Mr. Lichoulas advised him in a subsequent conversation that he did not intend to leave Ms. Cataldo blank money orders, that she had picked up the wrong envelope, and that he actually had forty \$250 contributions lined up. Kanin at 104 (Attachment 5). However, Mr. Lichoulas never explained to Mr. Kanin why he had two separate envelopes containing approximately \$10,000 in \$250 increments; nor did he identify the source of his supposed contributions, or actually turn over any such contributions to the Committee. Id. at 105 (Attachment 5). In any event, Mr. Lichoulas abandoned this claim by agreeing to plead guilty to the Information, which expressly provides that Mr. Lichoulas intended to provide the blank, unsigned money orders to the Tsongas Committee. Information at ¶ 13 (Attachment 4).

C. Conclusion

In light of the foregoing, the Office of General Counsel recommends that the Commission find reason to believe that James T. Lichoulas, Jr. knowingly and wilfully made an excessive contribution of \$9,500 to the Tsongas Committee in violation of 2 U.S.C. § 441a(a)(1)(A) and knowingly and wilfully contributed \$9,500 to the Tsongas Committee in the name of another, in violation of 2 U.S.C. § 441f.

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The Office of General Counsel further recommends that the Commission find reason to believe that Beth A. Cataldo knowingly and wilfully accepted an excessive contribution of \$9,500 to the Tsongas Committee in violation of 2 U.S.C. § 441a(f) and knowingly and wilfully accepted a \$9,500 contribution to the Tsongas Committee in the name of another, in violation of 2 U.S.C. § 441f.

Because Ms. Cataldo was the fundraising director for the Tsongas Committee, her acceptance of the apparently excessive contribution from Mr. Lichoulas may be attributed to the Committee. However, the Committee responded promptly and effectively to Ms. Cataldo's actions. The apparently excessive contribution was returned to Mr. Lichoulas without having been deposited in a Committee account, and Ms. Cataldo was discharged from her position. Therefore, we recommend that no action be taken against the Tsongas Committee with respect to the events discussed in this report.

III. PLAN FOR CONCILIATION AND FURTHER INVESTIGATION

A. Conciliation

The Office of General Counsel recommends that the Commission enter into pre-probable cause conciliation with Ms. Cataldo and Mr. Lichoulas.

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B. Further Investigation

Office will need to obtain additional information regarding the
procurement and disposition of the thirty-eight blank money
this

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orders that Mr. Lichoulas conveyed to Ms. Cataldo.^{9/} To obtain that information, we propose to depose Ms. Cataldo and Mr. Lichoulas and to serve document requests on the Mercantile Bank & Trust. Accordingly, this Office recommends that the Commission approve the attached subpoenas directed to Ms. Cataldo, Mr. Lichoulas and Mercantile Bank. See Attachment 9. Because bank record searches often are time consuming, we propose to serve the document requests on Mercantile Bank immediately. However, we do not propose to serve the deposition subpoenas on Ms. Cataldo and Mr. Lichoulas unless we conclude that conciliation negotiations have reached an impasse.

IV. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that Beth A. Cataldo knowingly and wilfully violated 2 U.S.C. §§ 441a(f) and 441f.
3. Find reason to believe that James T. Lichoulas, Jr. knowingly and wilfully violated 2 U.S.C. §§ 441a(a)(1)(A) and 441f.
4. Enter into conciliation with Beth A. Cataldo and James T. Lichoulas, Jr. prior to a finding of probable cause to believe.
5. Approve the attached Factual and Legal Analyzes.
6. Approve the attached conciliation agreements.

^{9/} Although we have substantial testimonial evidence, at this time we have no documentary evidence whatsoever. Moreover, much of our evidence -- such as the Boston Globe article and the information charging Mr. Lichoulas -- is second hand. To confirm the accuracy of our information, therefore, we will need to procure supporting documentation, as well as additional testimony.

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7. Approve the attached subpoena to produce documents and deposition subpoenas.
8. Approve the appropriate letters.

10/6/94
Date

L.M. Noble by LGC
Lawrence M. Noble
General Counsel

Attachments

1. Certification: Interim Audit Report on The Tsongas Committee, Inc. (May 25, 1993)
2. S. Leigh and S. Kurkjian, A Controversy Averted in '91, Boston Globe, November 23, 1992
3. Plea Agreement between James T. Lichoulas, Jr. and United States Attorney for the District of Massachusetts, dated August 11, 1994
4. Information in United States of America v. James T. Lichoulas, Jr., Cr. No. 94-10225-WGY (D. Mass.), filed September 1, 1994
5. Excerpt from Transcript of Deposition of Dennis Kanin taken in Connection with MUR 3585
6. Excerpt from Transcript of Deposition of Mary Wong taken in Connection with MUR 3585
7. Excerpt from Transcript of Deposition of David Goldman taken in Connection with MUR 3585
8. Factual and Legal Analyses
9. Subpoenas and Orders
10. Conciliation Agreements

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
Beth A. Cataldo;
James T. Lichoulas, Jr.

)
)
)
)

LRA 8424

(MUR 4091)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on October 19, 1994, the Commission decided by a vote of 5-0 to take the following actions in LRA 8424:

1. Open a MUR.
2. Find reason to believe that Beth A. Cataldo knowingly and wilfully violated 2 U.S.C. §§ 441a(f) and 441f.
3. Find reason to believe that James T. Lichoulas, Jr. knowingly and wilfully violated 2 U.S.C. §§ 441a(a)(1)(A) and 441f.
4. Enter into conciliation with Beth A. Cataldo and James T. Lichoulas, Jr. prior to a finding of probable cause to believe.

(continued)

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5. Approve the Factual and Legal Analyses, as recommended in the General Counsel's Report dated October 6, 1994.
6. Approve the conciliation agreements, as recommended in the General Counsel's Report dated October 6, 1994.
7. Approve the subpoena to produce documents and deposition subpoenas, as recommended in the General Counsel's Report dated October 6, 1994.
8. Approve the appropriate letters, as recommended in the General Counsel's Report dated October 6, 1994.

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

Attest:

10-20-94
Date

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

Received in the Secretariat: Thurs., Oct. 06, 1994 4:53 p.m.
Circulated to the Commission: Fri., Oct. 07, 1994 12:00 p.m.
Deadline for vote: Wed., Oct. 19, 1994 4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 25, 1994

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

James T. Lichoulas, Jr.
71 Redgate Lane
Reading, Massachusetts 01867

RE: MUR 4091
James T. Lichoulas, Jr.

Dear Mr. Lichoulas:

On October 19, 1994, the Federal Election Commission found that there is reason to believe that you violated 2 U.S.C. §§ 441a(a)(1)(A) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). 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.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing probable 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 Commission. In light of the fact that 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.

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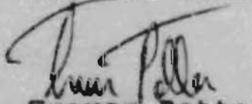
Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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

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

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact James S. Portnoy, the attorney assigned to this matter, at (202) 219-3690.

For the Commission,


Trevor Potter
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

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FEDERAL ELECTION COMMISSION

FACTUAL & LEGAL ANALYSIS

RESPONDENT: James T. Lichoulas, Jr.

MUR 4091

This matter was generated based on information ascertained by the Federal Election Commission in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

The Federal Election Campaign Act ("the Act") provides that no person shall make contributions to a candidate for federal office and his authorized political committees which, in the aggregate, exceed \$1,000. 2 U.S.C. § 441a(a)(1)(A). The Act further provides that no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution. 2 U.S.C. § 441f.

In April 1991, James T. Lichoulas, Jr. contributed \$1,000, the maximum lawful amount, to The Tsongas Committee. In July 1991, The Tsongas Committee hired Beth A. Cataldo as Director of Fundraising. Ms. Cataldo importuned Mr. Lichoulas to raise funds for the Committee. In response, in December 1991, Mr. Lichoulas procured thirty-eight sequential, unsigned, blank money orders for \$250 each -- a total of \$9,500 -- from Mercantile Bank & Trust in Boston. Mr. Lichoulas then placed the money orders in an envelope, telephoned Ms. Cataldo, advised her that he had procured funds for the Tsongas Committee, and

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arranged for her to pick up the envelope at the Bank. Ms. Cataldo promptly picked up the envelope.

Upon her return to the Tsongas Committee office, Ms. Cataldo solicited campaign staff members to sign the blank money orders. Several Committee staff members did so. Ms. Cataldo then conveyed the signed money orders to the campaign official responsible for depositing contributions.

In light of the foregoing, there is reason to believe that James T. Lichoulas, Jr. violated 2 U.S.C. § 441a(a)(1)(A) by knowingly and wilfully making thirty-eight excessive contributions totaling \$9,500 to the Tsongas Committee and violated 2 U.S.C. § 441f by knowingly and wilfully making thirty-eight contributions totaling \$9,500 to the Tsongas Committee in the name of another person or persons.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

October 25, 1994

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Beth A. Cataldo
c/o Daniel J. O'Connell, III
6 Beacon Street
Suite 900
Boston, Massachusetts 02108

RE: MUR 4091
Beth A. Cataldo

Dear Ms. Cataldo:

On October 19, 1994, the Federal Election Commission found that there is reason to believe that you violated 2 U.S.C. §§ 441a(f) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). 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.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing probable 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 Commission. In light of the fact that 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.

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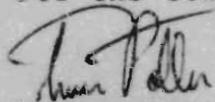
Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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

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

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact James S. Portnoy, the attorney assigned to this matter, at (202) 219-3690.

For the Commission,


Trevor Potter
Chairman

Enclosures

Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
FACTUAL & LEGAL ANALYSIS

RESPONDENT: Beth A. Cataldo

MUR 4091

This matter was generated based on information ascertained by the Federal Election Commission in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

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The Federal Election Campaign Act ("the Act") provides that no person shall make contributions to a candidate for federal office and his authorized political committees which, in the aggregate, exceed \$1,000, and that no officer or employee of a political committee shall knowingly accept a contribution in violation of the foregoing contribution limitation. 2 U.S.C. §§ 441a(a)(1)(A) and 441a(f). The Act further provides that no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution by one person in the name of another person. 2 U.S.C. § 441f.

In July 1991, The Tsongas Committee hired Beth A. Cataldo as Director of Fundraising. In that capacity, Ms. Cataldo importuned large contributors to raise additional funds for the Committee. Among the large contributors that Ms. Cataldo contacted was James T. Lichoulias, Jr., who had contributed \$1,000 to the Committee in April 1991.

In December 1991, Mr. Lichoulas telephoned Ms. Cataldo and advised her that he had procured funds for the Committee. Mr. Lichoulas then arranged for Ms. Cataldo to pick up an envelope at the Mercantile Bank & Trust in Boston. Ms. Cataldo promptly did so. The envelope contained thirty-eight sequential, unsigned, blank money orders for \$250 each -- a total of \$9,500.

When Ms. Cataldo returned to the Committee's office, she solicited Committee staff members to sign their names to the blank money orders. Several staff members acceded to Ms. Cataldo's request and signed the money orders. Ms. Cataldo then conveyed the signed money orders to another campaign official to be deposited in the Committee's account. Despite warnings from senior campaign personnel that her actions were improper, Ms. Cataldo continued to solicit staff members to sign the money orders.

In light of the foregoing, there is reason to believe that Beth A. Cataldo violated 2 U.S.C. § 441a(f) by knowingly and wilfully accepting thirty-eight excessive contributions totaling \$9,500 from Mr. Lichoulas and violated 2 U.S.C. § 441f by knowingly and wilfully accepting thirty-eight contributions totaling \$9,500 from Mr. Lichoulas in the name of another person.

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Nov 3 2 32 PM '94

Law Office

Daniel J. O'Connell, III
6 Beacon Street
Suite 900
Boston, Massachusetts 02108

Facsimile 227-8815
Area Code 617

Telephone 227-4040
Area Code 617

October 31, 1994

Trevor Potter, Chairman
Federal Election Commission
Washington, D.C.

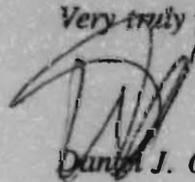
Re: MUR4091 Beth A. Cataldo

Dear Mr. Potter:

Receipt of materials sent to me by letter dated October 25, 1994 is acknowledged. I received these materials on October 28, 1994. I am in the process of reviewing them. In the event more time is needed or required to make a complete response, such time is hereby formally requested. I do know whether this will be required but I believe that it will, thus the necessity for this request.

If you have any questions or concerns, please give me a call.

Very truly yours,



Daniel J. O'Connell, III

DJO'C:kam

cc: James S. Portnoy
Ms. Beth Cataldo

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FAXED
11-3-94

November 3, 1994

BY TELECOPIER

Stephen Delinsky
Eckert, Seamans, Sherin
& Mellott
1 International Place
Boston, Massachusetts 02110

Re: Designation of Counsel

Dear Mr. Delinsky:

I write to follow up on our telephone conversation today regarding your client, James T. Lichoulas, Jr. As I advised you, the Commission's regulations require that we receive written notification from Mr. Lichoulas that you represent him before we may discuss matters concerning him with you. See 11 C.F.R. § 111.23. To satisfy this requirement, Mr. Lichoulas may complete and return the enclosed Statement of Designation of Counsel.

If you have any questions, you may contact me at (202) 219-3690.

Sincerely,

James S. Portnoy
Attorney

Enclosure

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ECKERT SEAMANS CHERIN & MELLOTT

One International Place 18th Floor
Boston, MA 02110
Telephone 617/342-6800
Facsimile 617/342-6899

November 4, 1994

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Nov 7 11 58 AM '94

VIA FAX AND FIRST CLASS MAIL

James S. Portnoy, Esquire
Federal Election Commission
Office Of General Counsel
Public Financing Ethics
And Special Projects
999 E Street, N.W.
Washington, D.C. 20463

MUR 4091

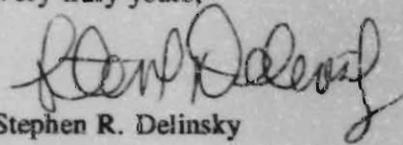
Re: James T. Lichoulas, Jr.

Dear Mr. Portnoy:

In accordance with our telephone conversation yesterday, attached is my client James T. Lichoulas' executed Designation of Counsel which identifies me as his counsel.

I look forward to hearing from you concerning this matter at your earliest convenience.

Very truly yours,



Stephen R. Delinsky

SRD/ecd
Enclosure

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- Boston
- Pittsburgh
- Harrisburg
- Allentown
- Philadelphia
- Buffalo
- Fort Lauderdale
- Boca Raton
- Miami
- Tallahassee
- Washington, D.C.

STEPHEN R. DELINSKY
617/342-6823

STATEMENT OF DESIGNATION OF COUNSEL

NOV 7 11 58 AM '94

FEDERAL ELECTION COMMISSION OFFICE OF GENERAL COUNSEL

NAME OF COUNSEL: Stephen R. Delinsky, Esquire
ADDRESS: Eckert Seamans Cherin & Mellott
One International Place
Boston, MA 02110
TELEPHONE: (617) 342-6825

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.

November 4 / 94
 Date

James T. Lichoulas, Jr.
 Signature

RESPONDENT'S NAME: James T. Lichoulas, Jr.
ADDRESS: c/o Eckert Seamans Cherin & Mellott
One International Place
Boston, MA 02110
HOME PHONE: _____
BUSINESS PHONE: _____

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 8, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Steven Lowell, Agent for Service
Mercantile Bank & Trust Company
61 Brookline Avenue
Boston, Massachusetts 02215

RE: MUR 4091

Dear Mr. Lowell:

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Enclosed is a Subpoena to Produce Documents and Order to Submit Written Answers to Questions, directed to Mercantile Bank & Trust Company. The Right to Financial Privacy Act of 1978 permits the customer whose records are sought ten days from the date of receipt of the Subpoena and Order to move to quash them. Upon the expiration of this period, the Commission will notify you that it has complied with the Right to Financial Privacy Act. In the absence of judicial intervention, it is then your obligation to comply with the terms of the Subpoena and Order. See 12 U.S.C. §§ 3405 and 3411.

Please be advised that 2 U.S.C. § 437g(a)(12) prohibits making public any Commission investigation without the written consent of the person with respect to whom such investigation is made. You are advised that no such consent has been given in this case.

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

Sincerely,

James S. Portnoy
Attorney

Enclosure
Subpoena and Order

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

)
) MUR 4091
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Steven Lowell, Agent for Service
Mercantile Bank & Trust
61 Brookline Avenue
Boston, Massachusetts 02215

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 15 days of your receipt of the Commission's Certification of Compliance with the Right to Financial Privacy Act.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this *4th* day of

November

For the Commission,



Trevor Potter
Chairman

ATTEST:

Margaret W. Enmons
Margaret W. Enmons
Secretary to the Commission

Attachment
Document Request and Questions

9704380265C

I. INSTRUCTIONS

In answering these interrogatories and requests for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1990 to date.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

II. DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

97043802651

"You" shall mean Mercantile Bank & Trust, including all officers, employees, agents or attorneys thereof.

"The Bank" shall mean Mercantile Bank & Trust, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

III. ORDER TO SUBMIT WRITTEN ANSWERS

You are hereby ordered to provide written answers, under oath, to the following questions:

97043802652

1. Identify any money orders, cashier's checks or similar financial instruments (hereafter referred to collectively as "money orders") purchased by or on behalf of James T. Lichoulas, Jr. from you in or about November or December 1991, including but not limited to approximately thirty-eight sequential money orders in the amount of \$250 each, purchased by or on behalf of Mr. Lichoulas, in or about mid to late December 1991.

2. For each money order identified in response to Question 1:

- A. Identify the purchaser of the money order;
- B. Provide all identification numbers that appear on the money order;
- C. State the date on which the money order was purchased;
- D. State the amount of the money order.

3. For each money order identified in response to Question 1, state whether the money order has been negotiated, deposited, redeemed or returned. If so, identify the person(s) who negotiated, deposited, redeemed or returned the money order and state the date on which they did so. Also, if the money order was deposited into an account at the Bank, identify the account into which the money order was deposited, and provide the account number and the name(s) of the account holder(s).

4. Identify all employees or other representatives of the Bank who communicated with Mr. Lichoulas regarding each money order identified in response to Question 1, including but not limited to all employees or other representatives of the Bank who sold the money orders to Mr. Lichoulas or procured them on his behalf or who conducted or participated in any transaction in which the money orders were negotiated, deposited, redeemed or returned by or on behalf of Mr. Lichoulas. Also, state the date and describe the circumstances and content of each such communication.

IV. REQUEST FOR PRODUCTION OF DOCUMENTS

You are hereby ordered to produce the following documents:

1. All documents discussing, describing, memorializing, evidencing or otherwise relating or pertaining to the purchase from the Bank of each money order identified in response Question 1 of the foregoing Order to Produce Written Answers. This request includes, but is not limited to the front and back of each money order and the front and back of any canceled check or other financial instrument used to purchase or otherwise procure each money order.

97043802653

2. All documents discussing, describing, memorializing, evidencing or otherwise relating or pertaining to the negotiation, return, redemption or deposit of each money order identified in response Question 1 of the foregoing Order to Produce Written Answers. This request includes, but is not limited to the front and back of each money order and the front and back of any deposit slip or similar document.

97043802654



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 9, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James T. Lichoulas, Jr.
71 Redgate Lane
Reading, Massachusetts 01867

RE: MUR 4091

Dear Mr. Lichoulas:

Records or information concerning your transactions held by the financial institution named in the attached subpoena and order are being sought by this agency in accordance with the Right to Financial Privacy Act of 1978 for the following purpose: to investigate possible violations of the Federal Election Campaign Act of 1971, as amended, by you in connection with the presidential campaign of Paul Tsongas.

If you desire that such records or information not be made available, you must:

1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Commission and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States District Courts: the United States District Court for the District of Massachusetts or the United States District Court for the District of Columbia.

3. Serve the Commission by mailing or delivering a copy of your motion and statement to: Federal Election Commission, Office of the General Counsel, 999 E Street, N.W., Washington, D.C. 20463.

97043802655

Letter to James T. Lichoules, Jr.
Page 2

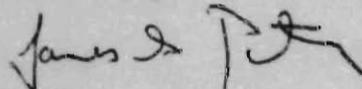
4. Be prepared to come to court and present your position in further detail.

5. You do not need a lawyer, although you may wish to employ one to represent and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or 14 days from the date of mailing of this notice, the records or information requested therein will be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer.

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

Sincerely,



James S. Portnoy
Attorney

Enclosures

Subpoena and Order to Mercantile Bank & Trust
Motion to Quash Subpoena and Order
Affidavit

97043802656

UNITED STATES DISTRICT COURT
FOR

James T. Lichoulas, Jr.,
Petitioner

v.

THE FEDERAL ELECTION COMMISSION,
Respondent

)
) MOTION TO QUASH
) COMMISSION SUBPOENA/ORDER
)
)
)
)

**MOTION TO QUASH COMMISSION
SUBPOENA/ORDER**

This matter comes before the court pursuant to 12 U.S.C. § 3401 et. seq., Right to Financial Privacy Act of 1978. Petitioner, James T. Lichoulas, Jr., requests this court to quash a subpoena and order of the Federal Election Commission which seeks to obtain certain bank documents and information relating to accounts maintained by Petitioner.

In support of this application, Petitioner swears to the following:

1. Petitioner controlled and maintained accounts at Mercantile Bank & Trust Company of Boston.
2. The Commission seeks financial records relating to the above accounts as part of its investigation pursuant to 2 U.S.C. § 437g.
3. Petitioner believes the Commission is not entitled to these records because

James T. Lichoulas, Jr.

97043802657

UNITED STATES DISTRICT COURT
FOR

James T. Lichoulas, Jr.,)
 Petitioner)
) AFFIDAVIT
v.)
)
FEDERAL ELECTION COMMISSION,)
 Respondent)

AFFIDAVIT

County:
State:

James T. Lichoulas, Jr., being duly sworn, makes the following his affidavit and states:

1. I hereby affirm that all of the statements in the Motion to Quash Commission Subpoena/Order are true and accurate to the best of my knowledge and belief.

2. Further the affiant sayeth not.

James T. Lichoulas, Jr.

Subscribed and sworn to before me this day of
 , 1994.

Notary Public

My Commission expires .

97043802658

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

)
) MUR 4091
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Steven Lowell, Agent for Service
Mercantile Bank & Trust
61 Brookline Avenue
Boston, Massachusetts 02215

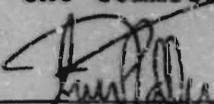
Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 15 days of your receipt of the Commission's Certification of Compliance with the Right to Financial Privacy Act.

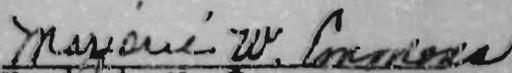
WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this *4th* day of

November

For the Commission,


Trevor Potter
Chairman

ATTEST:


Marjorie W. Emmons
Secretary to the Commission

Attachment
Document Request and Questions

97043802659

I. INSTRUCTIONS

In answering these interrogatories and requests for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1990 to date.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

II. DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

9704380266C

"You" shall mean Mercantile Bank & Trust, including all officers, employees, agents or attorneys thereof.

"The Bank" shall mean Mercantile Bank & Trust, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

III. ORDER TO SUBMIT WRITTEN ANSWERS

You are hereby ordered to provide written answers, under oath, to the following questions:

97043802661

1. Identify any money orders, cashier's checks or similar financial instruments (hereafter referred to collectively as "money orders") purchased by or on behalf of James T. Lichoulas, Jr. from you in or about November or December 1991, including but not limited to approximately thirty-eight sequential money orders in the amount of \$250 each, purchased by or on behalf of Mr. Lichoulas, in or about mid to late December 1991.

2. For each money order identified in response to Question 1:

- A. Identify the purchaser of the money order;
- B. Provide all identification numbers that appear on the money order;
- C. State the date on which the money order was purchased;
- D. State the amount of the money order.

3. For each money order identified in response to Question 1, state whether the money order has been negotiated, deposited, redeemed or returned. If so, identify the person(s) who negotiated, deposited, redeemed or returned the money order and state the date on which they did so. Also, if the money order was deposited into an account at the Bank, identify the account into which the money order was deposited, and provide the account number and the name(s) of the account holder(s).

4. Identify all employees or other representatives of the Bank who communicated with Mr. Lichoulas regarding each money order identified in response to Question 1, including but not limited to all employees or other representatives of the Bank who sold the money orders to Mr. Lichoulas or procured them on his behalf or who conducted or participated in any transaction in which the money orders were negotiated, deposited, redeemed or returned by or on behalf of Mr. Lichoulas. Also, state the date and describe the circumstances and content of each such communication.

IV. REQUEST FOR PRODUCTION OF DOCUMENTS

You are hereby ordered to produce the following documents:

1. All documents discussing, describing, memorializing, evidencing or otherwise relating or pertaining to the purchase from the Bank of each money order identified in response Question 1 of the foregoing Order to Produce Written Answers. This request includes, but is not limited to the front and back of each money order and the front and back of any canceled check or other financial instrument used to purchase or otherwise procure each money order.

97043802662

3. All documents discussing, describing, memorializing, evidencing or otherwise relating or pertaining to the negotiation, return, redemption or deposit of each money order identified in response Question 1 of the foregoing Order to Produce Written Answers. This request includes, but is not limited to the front and back of each money order and the front and back of any deposit slip or similar document.

97043802663



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

November 22, 1994

Daniel J. O'Connell, III
Law Offices of Daniel J. O'Connell, III
6 Beacon Street
Suite 900
Boston, Massachusetts 02108

Re: NUR 4091 (Beth A. Cataldo)

Dear Mr. O'Connell:

I write in response to your October 31, 1994 letter to Chairman Potter. In your letter, you acknowledged that on October 28, 1994, you received written notification that the Commission found reason to believe that your client, Beth A. Cataldo, violated the Federal Election Campaign Act. You also requested an indeterminate extension of time to respond to the Commission's determination.

On approximately November 4, 1994, I advised you that the Office of General Counsel has authority to grant extensions up to twenty days, whereas extensions exceeding twenty days must be approved by the Commission. We agreed, therefore, that this Office would construe your letter as a request for a twenty day extension, and would grant your request.

As I explained to your secretary on November 21, 1994, in light of the foregoing, Ms. Cataldo's deadline to respond to the Commission's reason to believe finding was extended from November 14, 1994 to December 5, 1994. Please note, however, that no further extensions will be granted by this Office.

If you have any questions, you may contact me at (202) 219-3690.

Sincerely,

James S. Portnoy
Attorney

97043802664



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

November 25, 1994

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Steven Lowell, Agent for Service
Mercantile Bank & Trust Company
61 Brookline Avenue
Boston, Massachusetts 02215

RE: MUR 4091

Dear Mr. Lowell:

Enclosed is a Certificate of Compliance with the Right to Financial Privacy Act of 1978, issued in connection with the Subpoena and Order sent to your financial institution on November 8 1994, seeking the financial records of James T. Lichoulas, Jr.

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

Sincerely,

James S. Portnoy
Attorney

Enclosure
Certificate

97043802665

CERTIFICATION OF COMPLIANCE WITH
THE RIGHT TO FINANCIAL PRIVACY ACT

TO: Steven Lowell, Agent for Service
Mercantile Bank & Trust Company
61 Brookline Avenue
Boston, Massachusetts 02215

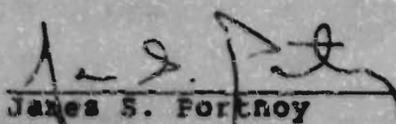
FROM: Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: MUR 4091

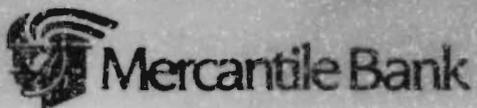
I hereby certify, pursuant to Section 1103(b) of the Right to Financial Privacy Act of 1978, 12 U.S.C. § 3403(b), that the provisions of the Act have been complied with as to the Subpoena to Produce Documents and Order to Submit Written Answers forwarded to you in the above-captioned matter, responses to which are being ordered pursuant to 12 U.S.C. §§ 3402 and 3405.

Sincerely,

11/25/94
Date


James S. Fortnoy
Attorney

97043802666



Mercantile Bank and Trust Company
 61 Brookline Avenue
 Boston, MA 02215
 (617)247-2800
 FAX: (617) 247-6581
 Member FDIC

December 22, 1994

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

Dec 27 11 37 AM '94

RECEIVED
 FEDERAL ELECTION
 COMMISSION
 OFFICE OF GENERAL
 COUNSEL

RE: MUR 4091

To Whom It May Concern,

In response to the above referenced subpoena, please find under oath the following responses.

- 1). The thirty eight money orders were purchased from Mercantile Bank and Trust Company by James Lichoulas, Jr. on January 2, 1992.
- 2). A. The money orders were purchased by James Lichoulas, Jr. Mr. Lichoulas resides at 7 Hopkins Street, Reading MA 01867 His profession is Real Estate Developer.
- B. Money Order Serial Numbers

5823	5948
5826	6053
5829	6054
5833	6058
5837	6061
5840	6066
5841	6067
5845	6071
5848	6072
5850	6075
5933	6076
5934	6080
5935	6082
5938	6084
5939	6085
5940	6088
5944	6090
5946	6094
5948	6100

97043802667

C. All money orders were purchased on January 2, 1992.

D. All 38 money orders were in the amount of \$250.

- 3). On January 7, 1992 James Lichoulas, Jr. deposited all of the above referenced money orders with the exception of No. 5944 to account no. which is entitled James T. Lichoulas, Jr. or Rita Lichoulas.

On January 15, 1992 Mr. Lichoulas completed an Affidavit of Lost Money Order for money order no. 5944. The proceeds of this money order were also deposited to account no.

- 4). Virginia Yeanacopolis has had communication with Mr. Lichoulas in this regard. Mrs. Yeanacopolis resides at 64 David Road, Bellingham MA 02019 She is the Head Teller at Mercantile Bank.

On January 2, 1992 Mr. Lichoulas called Mrs. Yeanacopolis and asked her to prepare 38 money orders in the amount of \$250 each. The cost of the money orders to be withdrawn from his account no. He further stated that a woman from the Tsongas Office would be in to pick them up. He further asked that they not be in sequential order.

On January 7, 1992 Mr. Lichoulas again called Virginia Yeanacopolis. He told her that the money orders had not been used and he wanted to put them back into his account. Later that day he came in to perform the transaction at Mrs. Yeanacopolis' window. At that time he asked for copies of the money orders.

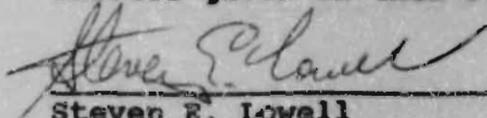
Some time in late June or early July of 1994 Mr. Lichoulas again called Virginia Yeanacopolis. This time he asked if she would speak to his attorney regarding the money orders. Initially she agreed but subsequently decided against it and did not speak to his attorney.

97043802668

To the best of my knowledge no other employees or Bank representative have communicated with Mr. Lichoulas in this regard.

This response has been prepared by Steven Lowell.

I hereby attest that to the best of my knowledge the answers given in this response are true and accurate.

 12/22/94

Steven E. Lowell
Keeper of the Records

97043802669



MERCANTILE BANK AND TRUST COMPANY

WE ARE CHARGING YOUR ACCOUNT AS DESCRIBED BELOW PLEASE SEE THAT THE AMOUNT IS DEDUCTED ON YOUR BOOKS SO THAT OUR ACCOUNTS MAY AGREE

JANUARY 2, 19 92

FOR WITHDRAWAL OF FUNDS PER CUSTOMER REQUEST.

\$9,500.00

AMT OF CHARGE

\$9,500.00

ACCOUNT NUMBER

CHARGE TO JAMES T. LICHOUAS JR.

[REDACTED ACCOUNT NUMBER]

66 ENTERED BY [Signature] APPROVED BY [Signature]

[REDACTED]

11-88 Deluxe MC 17850G

MB-1

97043802670

01/31/92

1

WITH MORTGAGE RATES THE LOWEST THEY HAVE BEEN IN RECENT YEARS, MANY OF OUR CUSTOMERS ARE CONSIDERING THE PURCHASE OR REFINANCING OF A HOUSE. IF YOU ARE CONSIDERING ONE OF THESE OPTIONS, WE WANT YOU TO KNOW THAT MERCANTILE BANK HAS A VARIETY OF MORTGAGE PLANS AVAILABLE AT VERY COMPETITIVE RATES. PLEASE CALL US FOR DETAILS AND APPLICATION INFORMATION.

JAMES T LICHOUAS JR
RITA LICHOUAS
7 HOPKINS STREET
READING MA 01867

PERSONAL NOW CHECKING
YOUR PREVIOUS BALANCE ON 12/31/91
PLUS DEPOSITS & OTHER CREDITS
MINUS CHECKS & OTHER DEBITS
EQUALS YOUR NEW BALANCE
1992 INTEREST EARNED
AVG COLLECTED-FUNDS BALANCE

----- INTEREST RATE SUMMARY -----

5.250% STARTING ON 12/31/91
5.000% STARTING ON 01/03/92
4.000% STARTING ON 01/06/92

----- DEPOSITS & OTHER TRANSACTIONS -----

	DATE	AMOUNT
CREDIT MEMO	01-07 +	9,250.00
LOAN PAYMENT		
DEPOSIT	01-15 +	250.00
DEPOSIT		
INTEREST EARNED		

-----CHECKS-----

-----CHECKS-----

-----BALANCES-----

ITEM	DATE	AMOUNT
	01-02	9,500.00

97043802671

C

AFFIDAVIT OF A LOST MONEY ORDER

Dec 27 11 37 AM '54

KNOW ALL MEN BY THESE PRESENTS THAT I, JAMES LICHOUAS JR., ARE HOLDEN AND STAND FIRMLY BOUND UNTO MERCANTILE BANK AND TRUST COMPANY, BOSTON, MASSACHUSETTS, A CORPORATION ESTABLISHED UNDER THE LAWS OF THE UNITED STATES, IN THE SUM OF \$250.00 DOLLARS, TO THE PAYMENT OF WHICH TO THE SAID MERCANTILE BANK AND TRUST COMPANY OR ITS SUCCESSORS OR ASSIGNS, WE HEREBY JOINTLY AND SEVERALLY BIND OURSELVES, OUR HEIRS, EXECUTORS, AND ADMINISTRATORS.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, WHEREAS, SAID JAMES LICHOUAS JR. HAS NOT RECEIVED, HAS LOST, OR SO MISLAID THAT IT CANNOT BE FOUND, HIS MONEY ORDER OF SAID MERCANTILE BANK AND TRUST COMPANY, SAID MONEY ORDER BEING NUMBERED...5944...AND REPRESENTING THE SUM OF .TWO HUNDRED FIFTY... AND 00/100 (\$250.00) DOLLARS.

WHEREAS, SAID N/A IS DESIROUS OF HAVING A DUPLICATE MONEY ORDER ISSUED IN PLACE OF THE ONE SO LOST OR MISLAID, AND,

WHEREAS, THE SAID MERCANTILE BANK AND TRUST COMPANY HAS THIS DAY ISSUED TO SAID N/A A DUPLICATE MONEY ORDER NUMBERED.....IN PLACE OF THE ONE LOST OR MISLAID AS ABOVE STATED.

NOW, THEREFORE, IS THE SAID OBLIGATOR SHALL AT ALL TIMES HEREAFTER INDEMNIFY AND SAVE HARMLESS THE MERCANTILE BANK AND TRUST COMPANY FROM ANY AND ALL LOSS, COST, DAMAGE, OR EXPENSE, WHICH MAY HAPPEN, ARISE OR ACCRUE BY REASON OF THE ISSUING OF SAID DUPLICATE MONEY ORDER BY ANY PERSON LAWFULLY ENTITLED TO THE SAME THEN THIS OBLIGATION SHALL BE VOID, OTHERWISE IT SHALL REMAIN IN FULL FORCE AND VIRTUE.

IN WITNESS WHEREOF WE HEREUNTO SET OUR HANDS AND SEALS THIS...15...DAY OF JANUARY, 1954.

SIGNED AND SEALED
IN PRESENCE OF:

Dellie W. Tang

James T. Lichouas Jr

97043802672



MERCANTILE BANK AND TRUST COMPANY
 WE ARE CHARGING YOUR ACCOUNT AS DESCRIBED BELOW. PLEASE SEE THAT
 THE AMOUNT IS DEDUCTED ON YOUR BOOKS SO THAT OUR ACCOUNTS MAY AGREE.

1/15 19 92

FOR rept lost money order #5944

AMT. OF CHARGE

250.00

ACCOUNT NUMBER

[REDACTED]

CHARGE TO

J. Lichoulas Jr

60	AM	[Signature]
TRAN CODE	ENTERED BY	APPROVED BY

00

[REDACTED]

[REDACTED]

11-87 Debit NC 116830

MB-36

97043802673

97043802674

PERSONAL MONEY ORDER

5823

PAY TO THE ORDER OF The Sun 1100 Dec 25 1991 250.00 8-272/110

NOT VALID OVER \$500 DOLLARS

Mercantile Bank
Boston, Massachusetts

[REDACTED]

PERSONAL MONEY ORDER

5826

PAY TO THE ORDER OF The Tsongas 11 Dec 25 1991 250.00 8-272/110

NOT VALID OVER \$500 DOLLARS

Mercantile Bank
Boston, Massachusetts

[REDACTED]

PERSONAL MONEY ORDER

5829

PAY TO THE ORDER OF [REDACTED] 11 12-30 1991 250.00 8-272/110

NOT VALID OVER \$500 DOLLARS

Mercantile Bank
Boston, Massachusetts

[REDACTED]

PERSONAL MONEY ORDER

5833

PAY TO THE ORDER OF The Sun Committee Dec 29 1991 250.00 8-272/110

NOT VALID OVER \$500 DOLLARS

Mercantile Bank
Boston, Massachusetts

[REDACTED]

9 7 0 4 3 8 0 2 6 7 5

NOT USED FOR
PURPOSE INTENDED

97043802676

5833

12-26 1991 8-272/110

PAY TO THE ORDER OF Tsongas

Mercantile Bank
Boston, Massachusetts

[Redacted]

5845

12-30 1991 8-272/110

PAY TO THE ORDER OF The Committee

Mercantile Bank
Boston, Massachusetts

NOT VALID OVER 5000 DOLLARS

[Redacted]

5840

Dec 30 1991 8-272/110

PAY TO THE ORDER OF Tsong

\$50.00

Mercantile Bank
Boston, Massachusetts

OVER 5000 DOLLARS

[Redacted]

5841

Dec 26 1991 8-272/110

PAY TO THE ORDER OF The

250.00

Mercantile Bank
Boston, Massachusetts

NOT VALID OVER 5000 DOLLARS

[Redacted]

9 7 0 4 3 8 0 2 6 7 7

NOT USED FOR
PURPOSE INTENDED

NOT USED FOR
PURPOSE INTENDED

NOT USED FOR
PURPOSE INTENDED



97043802678

5934

12/30 1991 6-372/110

PAY TO THE ORDER OF Ts 200.00

NOT VALID OVER \$500 DOLLARS

Mercantile Bank
Boston, Massachusetts

5837

12/27 1991 6-372/110

PAY TO THE ORDER OF Tsong 250.00

NOT VALID OVER \$500 DOLLARS

Mercantile Bank
Boston, Massachusetts

5850

12-30 1991 6-372/110

PAY TO THE ORDER OF Tsong 250.00

OVER \$500 DOLLARS

Mercantile Bank
Boston, Massachusetts

5848

12-30 1991 6-372/110

PAY TO THE ORDER OF Tsong 250.00

OVER \$500 DOLLARS

Mercantile Bank
Boston, Massachusetts

MB-17

9 7 0 4 3 8 0 2 6 7 9

NOT USED FOR PURPOSE
INTENDED

NOT USED FOR
PURPOSE INTENDED

NOT USED FOR PURPOSE
INTENDED

NOT USED FOR
PURPOSE INTENDED



12-30 91
The Terra
Title

Mercantile Bank
Boston, Massachusetts

PERSONAL MONEY ORDER 5948

12-30 1991 8-272/110

250.-

PAY TO THE ORDER OF Tsc

NOT VALID OVER 9999 DOLLARS

Mercantile Bank
Boston, Massachusetts

PERSONAL MONEY ORDER 6054

12-30 1991 8-272/110

The Terra P.

PAY TO THE ORDER OF

Mercantile Bank
Boston, Massachusetts

PERSONAL MONEY ORDER 6051

Dec 30 1991 8-272/110

250.00

PAY TO THE ORDER OF The Miller

NOT VALID OVER 9999 DOLLARS

Mercantile Bank
Boston, Massachusetts

9704380268C

9 7 0 4 3 8 0 2 6 8 1

NOT USED FOR
PURPOSE INTENDED



NOT USED FOR
PURPOSE INTENDED



NOT USED FOR
PURPOSE INTENDED



NOT USED FOR
PURPOSE INTENDED



9 7 0 4 3 8 0 2 6 8 3

NOT USED FOR
PURPOSE INTENDED

NOT USED FOR PURPOSE
INTENDED

NOT USED FOR PURPOSE
INTENDED

NOT USED FOR PURPOSE
INTENDED

97043802684

PERSONAL MONEY ORDER

6071

12-30-91 6272/110

PAY TO THE ORDER OF Tenneco Committee 250.00

NOT VALID OVER \$500 DOLLARS

A. Anderson
c/o Dr.
-A

Mercantile Bank
Boston, Massachusetts

PERSONAL MONEY ORDER

6061

Dec 30 1991 6272/110

PAY TO THE ORDER OF The T... 250.00

NOT VALID OVER \$500 DOLLARS

A. Anderson

Mercantile Bank
Boston, Massachusetts

PERSONAL MONEY ORDER

6053

12-30-91 6272/110

PAY TO THE ORDER OF The Tenn... 250.00

NOT VALID OVER \$500 DOLLARS

Mercantile Bank
Boston, Massachusetts

PERSONAL MONEY ORDER

5950

Dec 30 1991 6272/110

PAY TO THE ORDER OF The Tenneco 250.00

NOT VALID OVER \$500 DOLLARS

Mercantile Bank
Boston, Massachusetts

KB-20

9 7 0 4 3 8 0 2 6 8 5

NOT USED FOR
PURPOSE INTENDED

97043802686

6060

Dec 30 19 91 6-572/110

PAY TO THE ORDER OF Thomas Com

NOT VALID OVER 5000 DOLLARS

Mercantile Bank
Boston, Massachusetts

6067

12-30 19 91 6-572/110

PAY TO THE ORDER OF The Tennis A

NOT VALID OVER 5000 DOLLARS

Mercantile Bank
Boston, Massachusetts

6066

12-30 19 91 6-572/110

PAY TO THE ORDER OF The T. P.

NOT VALID OVER 5000 DOLLARS

Mercantile Bank
Boston, Massachusetts

6072

12-26 19 91 6-572/110

PAY TO THE ORDER OF TSC

NOT VALID OVER 5000 DOLLARS

Mercantile Bank
Boston, Massachusetts

97043802687

NOT USED FOR
PURPOSE
INTENDED

—

NOT USED FOR
PURPOSE INTENDED

—

NOT USED FOR
PURPOSE INTENDED

—

NOT USED FOR
PURPOSE INTENDED

—

97043802688

PERSONAL CHECK ORDER

6084

12/30 1991

PAY TO THE ORDER OF The Committee

NOT VALID OVER \$500 DOLLARS

Mercantile Bank
Boston, Massachusetts

12/30 1991

12/30

PERSONAL CHECK ORDER

6094

12-30 1991

PAY TO THE ORDER OF The Committee \$250.00

NOT VALID OVER \$500 DOLLARS

Mercantile Bank
Boston, Massachusetts

12-30 1991

Alexander Dr.

PERSONAL CHECK ORDER

6085

12/30 1991

PAY TO THE ORDER OF The Committee

NOT VALID OVER \$500 DOLLARS

Mercantile Bank
Boston, Massachusetts

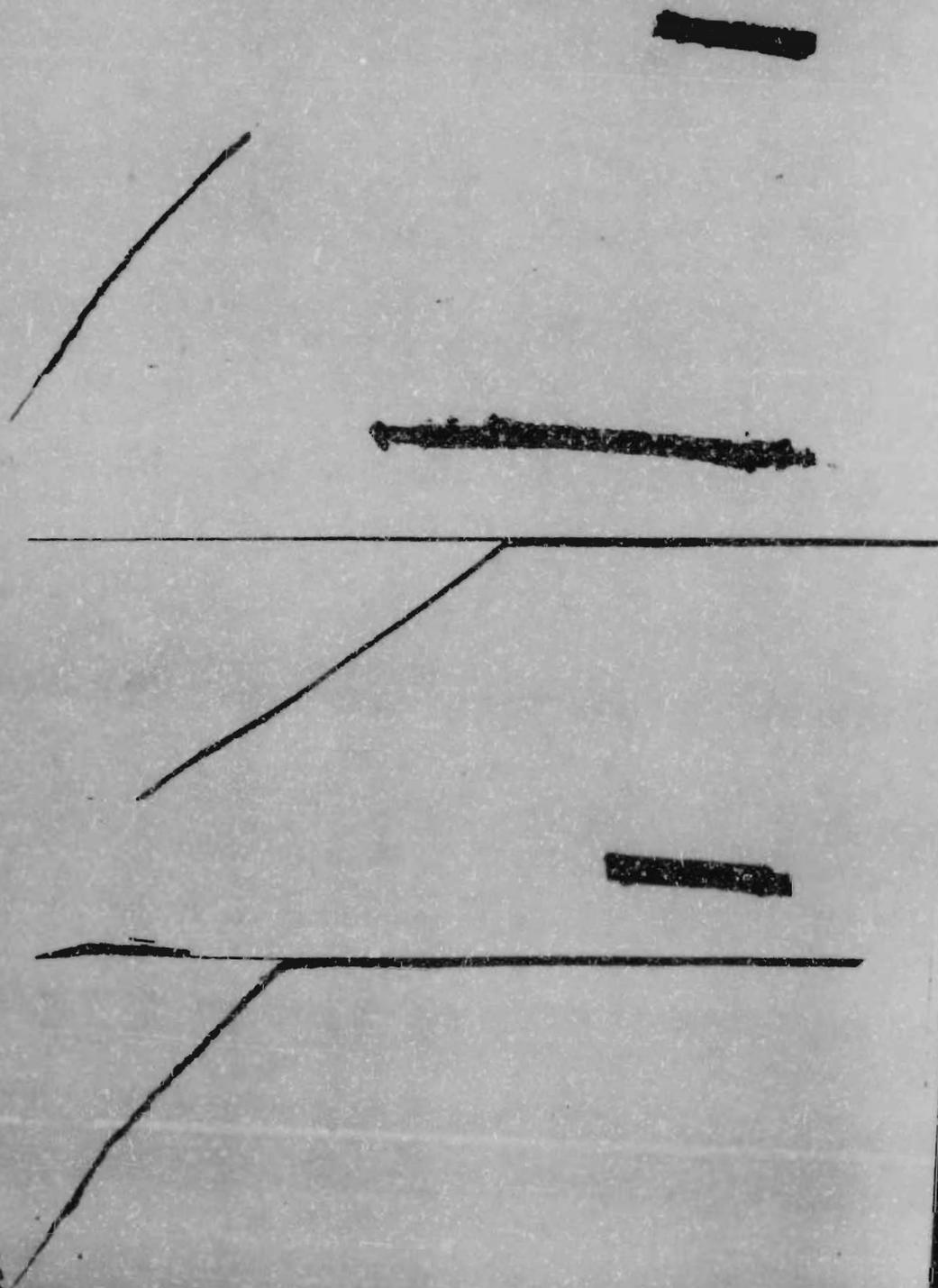
12/30 1991

Mrs. Judith Ann

12/30

97043802689

INTSIVE



9704380269C

PAY TO THE ORDER OF

The

Committee

12-30-91

6-272/110

250.00

NOT VALID OVER \$500 DOLLARS

Mercantile Bank
Boston, Massachusetts

D. Alexander
D.



PAY TO THE ORDER OF

Tsongas

The

Dec 30, 1991

6-272/110

NOT OVER \$500 DOLLARS

Mercantile Bank
Boston, Massachusetts

D. Alexander



PAY TO THE ORDER OF

Tsongas for

The

12/30/91

6-272/110

250.00

NOT OVER \$500 DOLLARS

Mercantile Bank
Boston, Massachusetts



PAY TO THE ORDER OF

Tsongas for

The

Committee

12/30/91

6-272/110

250.-

NOT OVER \$500 DOLLARS

Mercantile Bank
Boston, Massachusetts



HB-13

6086

6082

6076

6075

9 7 0 4 3 8 0 2 6 9 1

NOT USED FOR
PURPOSE INTENDED

NOT USED FOR
PURPOSE INTENDED

NOT USED FOR PURPOSE
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PERSONAL MONEY ORDER

6090

PAY TO THE ORDER OF

Tsingpo Crum

12/28 1991

5-872/116

250.00

OVER 250 DOLLARS

Mercantile Bank
Boston, Massachusetts

PERSONAL MONEY ORDER

6100

PAY TO THE ORDER OF

Tsingpo Crum

12/29 1991

5-872/116

250.00

OVER 250 DOLLARS

Mercantile Bank
Boston, Massachusetts

11/11

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12-82

97043802693

NOT USED FOR
PURPOSE INTENDED

NOT USED FOR
PURPOSE INTENDED



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 3, 1995

By Fax and Mail

Steven Lowell
Mercantile Bank & Trust Company
61 Brookline Avenue
Boston, Massachusetts 02215

RE: MUR 4091

Dear Mr. Lowell:

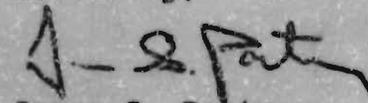
I write to follow up on our conversation of December 30, 1994, regarding Mercantile Bank & Trust's ("the Bank") response to the Commission's November 4, 1994 subpoena in the above-referenced matter.

During our conversation, I advised you that it would be necessary for me to interview Virginia Yeanacopolis, Head Teller at the Bank, regarding events described in the Bank's response to the subpoena. I also advised you that I would be willing to speak with Ms. Yeanacopolis informally by telephone, rather than by sworn deposition.

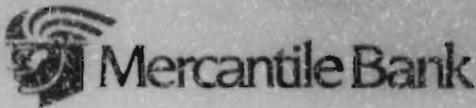
In light of the fact that two months have elapsed since the Commission issued the subpoena to the Bank, we would appreciate your assistance in scheduling the interview as soon as possible. Specifically, I propose to interview Ms. Yeanacopolis at a mutually agreeable time between January 3 and January 5, 1995. I will telephone you shortly to confirm the time for the interview.

Thank you for your continued cooperation in this matter. If you have any questions please contact me at (202) 219-3690.

Sincerely,


James S. Portnoy
Attorney

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Mercantile Bank and Trust Company
 61 Brookline Avenue
 Boston, MA 02215
 (617) 247-2800
 FAX: (617) 247-6581
 Member FDIC

RECEIVED
 FEDERAL ELECTION
 COMMISSION
 OFFICE OF GENERAL
 COUNSEL
 JAN 17 10 44 AM '95

January 6, 1995

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

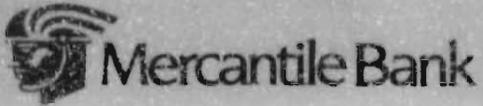
RE: MUR 4091

To Whom It May Concern,

I have recently learned of additional information relative to the above referenced matter. So, as a follow up to my previous response dated December 22, 1994, please find the following:

Sometime during the summer of 1994, the Bank received a phone call from a representative of the AP press service. The individual asked to speak with James Lichoulas. Upon being informed that Mr. Lichoulas did not have an office at the Bank, he asked whether the Bank would comment on Mr. Lichoulas and his relation to the Tsongas Presidential campaign. At this point he was referred to Richard Arnold, Senior Vice President. Mr. Arnold refused comment, and then attempted to locate Mr. Lichoulas. Shortly thereafter Mr. Lichoulas called Mr. Arnold (from his attorney's office). Upon being informed that AP had called, Mr. Lichoulas stated that he had made a mistake, he was being fined \$5,000. for it and that would be the end of it. A short time after this brief conversation Mr. Lichoulas again called Mr. Arnold (this time from his car phone) and told him to tell Virginia Yeanacopolis that she did not need to be concerned about the situation. He was the one in trouble, no one else was involved.

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Mercantile Bank and Trust Company
61 Brookline Avenue
Boston, MA 02215
(617) 247-2800
FAX: (617) 247-6981
Member FDIC

Several days later, Mr. Lichoulas came to the Bank and spoke with Neal Hunt, President and CEO. At that time Mr. Lichoulas stated that he and his attorney have come to an agreement with the authorities and that he was being fined \$5,000. He said nothing of a plea bargain or conviction.

If you have any questions or require additional information, please feel free to contact me.

Very truly yours,

A handwritten signature in cursive script that reads "Steven E. Lowell". The signature is written in dark ink and is positioned above the typed name and title.

Steven E. Lowell
Assistant Vice President

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 20, 1995

BY FACSIMILE
AND FEDERAL EXPRESS

Daniel J. O'Connell, III
Law Offices of Daniel J. O'Connell, III
6 Beacon Street, Suite 900
Boston, Massachusetts 02108

RE: MUR 4091
Beth Cataldo

Dear Mr. O'Connell:

On October 25, 1995, you were notified that the Federal Election Commission had found reason to believe your client, Beth A. Cataldo, knowingly and wilfully violated 2 U.S.C. §§ 441a(f) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended.

Pursuant to its investigation of this matter, the Commission has issued the attached subpoena requiring Ms. Cataldo to appear and give sworn testimony on February 3, 1995 and to produce documents to this Office by February 1, 1995.

Within two days of your receipt of this notification, please confirm the scheduled appearance with me. If you intend to represent Ms. Cataldo at her deposition, please notify us. In addition, please provide us with the names and addresses of any other attorneys who will attend the deposition.

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

Sincerely,

James S. Portnoy
Attorney

Enclosure
Subpoena

97043802697

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Beth Cataldo) MUR 4091
)

SUBPOENA

TO: Beth Cataldo
c/o Daniel J. O'Connell, III
Law Offices of Daniel J. O'Connell, III
6 Beacon Street, Suite 900
Boston, Massachusetts 02108

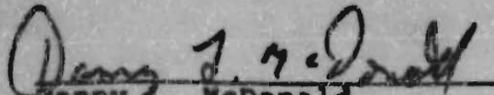
Pursuant to 2 U.S.C. § 437d(a)(3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby subpoenas you to appear for deposition with regard to MUR 4091. Notice is hereby given that the deposition is to be taken on February 3, 1995 in Room 328, 1003 J.W. McCormack Building, POCH, Boston, Massachusetts, beginning at 1 p.m. and continuing each day thereafter as necessary.

Further, pursuant to 2 U.S.C. § 437d(a)(3), you are hereby subpoenaed to produce the documents listed on the attachment to this subpoena. Legible copies which, where applicable, show both sides of the documents, may be substituted for originals. The documents must be submitted to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, by February 1, 1995.

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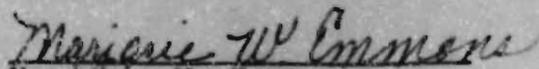
WHEREFORE, the Chairman of the Federal Election Commission
has hereunto set his hand in Washington, D.C., on this *20th* day
of January, 1995.

For the Commission,



Danny L. McDonald
Chairman

ATTEST:



Marjorie W. Emmons
Secretary to the Commission

Attachment
Document Request

97043802699

I. INSTRUCTIONS

In answering this request for production of documents, furnish all documents, however obtained, that are in your possession or are otherwise available to you.

Each request is to be answered separately and independently, and unless specifically stated in the particular discovery request, no request shall be answered solely by reference either to another answer or to an exhibit attached to your response.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1990 to date.

The following request for production of documents is continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

II. DEFINITIONS

For the purpose of this discovery request, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the person(s) to whom this subpoena is addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets,

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reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

II. REQUEST FOR PRODUCTION OF DOCUMENTS

You are hereby ordered to produce the following documents:

1. All documents discussing, describing, memorializing, evidencing or otherwise relating or pertaining to any contributions that were given, made available, or otherwise conveyed to you by James T. Lichoulas, Jr., for The Tsongas Committee.
2. All documents discussing, describing, memorializing, evidencing or otherwise relating or pertaining to any money orders, checks, or similar financial instruments that were given, made available, or otherwise conveyed to you by James T. Lichoulas, Jr., for The Tsongas Committee.

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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION FEB 9 9 25 AM '95

In the Matter of)
)
James T. Lichoulas, Jr.) MUR 4091
)

SENSITIVE

GENERAL COUNSEL'S REPORT

I. INTRODUCTION

On October 19, 1994, the Commission found reason to believe that James T. Lichoulas, Jr. knowingly and wilfully violated 2 U.S.C. §§ 441a(a)(1)(A) and 441f. The Commission also authorized this Office to enter into pre-probable cause conciliation negotiations with Mr. Lichoulas.

Attached hereto is a signed proposed conciliation agreement from Mr. Lichoulas (Attachment 1). We recommend that the Commission accept Mr. Lichoulas' proposed agreement.

II. DISCUSSION

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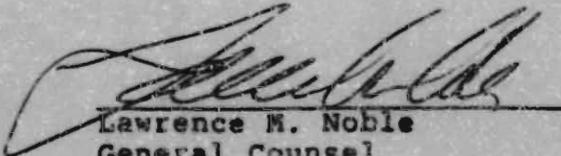
For the foregoing reasons, we recommend that the Commission accept the conciliation agreement that Mr. Lichoulas proposes, and that the file in this matter be closed with respect to Mr. Lichoulas.

III. RECOMMENDATIONS

1. Approve the attached proposed Conciliation Agreement with James T. Lichoulas, Jr.
2. Close the file in this matter with respect to James T. Lichoulas, Jr.
3. Approve the appropriate letters.

Date

2/9/95


Lawrence M. Noble
General Counsel

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Attachments

1. Proposed Conciliation Agreement with James T. Lichoulas, Jr.

Staff Assigned: James S. Portnoy

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 4091
James T. Lichoulas, Jr.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 14, 1995, the Commission decided by a vote of 5-0 to take the following actions in MUR 4091:

1. Approve the proposed Conciliation Agreement with James T. Lichoulas, Jr., as recommended in the General Counsel's Report dated February 9, 1995.
2. Close the file in this matter with respect to James T. Lichoulas, Jr.
3. Approve the appropriate letters, as recommended in the General Counsel's Report dated February 9, 1995.

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

Attest:

2-14-95
Date

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

Received in the Secretariat: Thurs., Feb. 09, 1995 9:26 a.m.
Circulated to the Commission: Thurs., Feb. 09, 1995 11:00 a.m.
Deadline for vote: Tues., Feb. 14, 1995 4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 16, 1995

Stephen R. Delinsky
Eckert, Seamans, Cherin & Mellott
One International Place, 18th Floor
Boston, Massachusetts 02110

Re: MUR 4091 (James T. Lichoulas, Jr.)

Dear Mr. Delinsky:

On February 14, 1995, the Federal Election Commission accepted the signed conciliation agreement you submitted on behalf of your client, James T. Lichoulas, Jr., in settlement of violations of 2 U.S.C. §§ 441a(a)(1)(A) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter as it pertains to Mr. Lichoulas.

This matter will become public within 30 days after it has been closed with respect to all other respondents involved. Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 45 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 219-3690.

Sincerely,


James S. Portnoy
Attorney

Enclosure
Conciliation Agreement

97043802708

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JAN 30 9 52 AM '95

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
James T. Lichoulas, Jr.) MUR 4091
)
)

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that James T. Lichoulas, Jr. ("Respondent") knowingly and wilfully violated 2 U.S.C. §§ 441a(a)(1)(A) and 441f.

NOW THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered into pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

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

III. Respondent enters voluntarily into this agreement with the Commission.

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

1. Paul Tsongas was a candidate for the nomination of the Democratic Party for the office of President of the United States in the election held in November 1992. The Tsongas Committee, Inc. ("the Committee") is a political committee as defined in 2 U.S.C. § 431(4) and is the authorized committee of Mr. Tsongas as defined in 2 U.S.C. § 431(6).

2. Respondent is an individual who resides in Reading, Massachusetts.

3. Pursuant to 2 U.S.C. § 441a(a)(1)(A), it is unlawful for a person to make contributions to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed \$1,000.

4. Pursuant to 2 U.S.C. § 441f, it is unlawful for a person to make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution.

5. In April 1991, Respondent contributed \$1,000 to the Committee.

6. On or about December 30, 1991, Respondent procured thirty-eight blank money orders from a bank in Boston, Massachusetts. Each money order was in the amount of \$250. The total amount of the money orders was \$9,500. The source of the funds was Respondent's personal account at the bank.

7. Respondent procured the money orders in order to contribute additional funds to the Committee, despite the

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fact that Respondent knew that he already had contributed the maximum lawful amount to the Committee.

8. Respondent procured blank money orders in order to conceal the fact that he was the contributor.

9. On or about December 30, 1991, Respondent telephoned Beth A. Cataldo, Director of Fundraising for the Committee, advised her that he had procured \$9,500 in contributions for the Committee, and arranged for her to pick up an envelope containing the contributions at the bank.

10. On or about December 30, 1991, Ms. Cataldo went to the bank and picked up an envelope containing the money orders. Ms. Cataldo then returned to the Committee's office and successfully solicited campaign staff members to sign the money orders and to make them payable to the Committee. Ms. Cataldo solicited campaign staff members to sign the money orders until the Committee's campaign manager telephoned and instructed her to stop.

11. On or about December 31, 1991, the Committee returned the money orders to Respondent, who redeposited the funds in his personal account at the bank.

V. Respondent violated 2 U.S.C. § 441a(a)(1)(A) by knowingly and wilfully making thirty-eight excessive contributions totaling \$9,500 to the Committee.

VI. Respondent violated 2 U.S.C. § 441f by knowingly and wilfully making thirty-eight contributions in the form of blank money orders totaling \$9,500 to the Committee.

VII. Respondent will pay a civil penalty to the Federal

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Election Commission in the amount of twenty-four thousand five hundred dollars (\$24,500) pursuant to 2 U.S.C. § 437g(a)(5)(B).

VIII. 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.

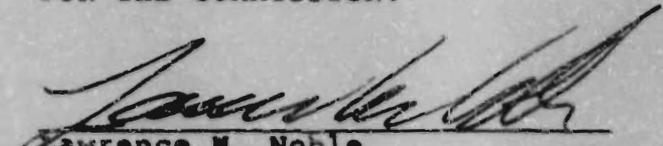
IX. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

X. Respondent shall have no more than 45 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.

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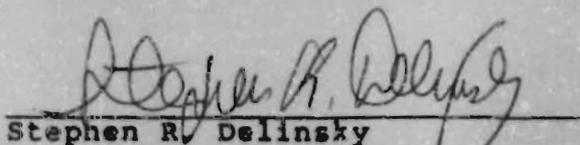
XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:


Lawrence M. Noble
General Counsel

2-16-95
Date

FOR THE RESPONDENT:


Stephen R. Delinsky
Counsel for Respondent

1-26-95
Date

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Somerset Savings Bank

0044125

53-7061
2113

Somerville MASSACHUSETTS March 20 19 95

PAY TO THE ORDER OF ***Federal Election Commission*** \$ 24,500.00

THE SUM 24500 DOLS 00 CTS

TREASURER'S CHECK

J. H. ...
AUTHORIZING SIGNATURE



97043802714

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

FAX (202) 393-5760

DIRECT DIAL
(202) 371-7000

(202) 371-7000

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TOKYO
TORONTO

February 17, 1995

VIA HAND DELIVERY

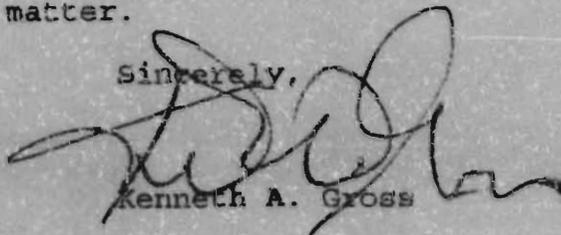
Lawrence M. Noble, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C.
Attn: Jose Rodriguez

Re: MUR 4091 - Beth Cataldo

Dear Mr. Noble:

Enclosed please find a Designation of Counsel
in the above referenced matter.

Sincerely,



Kenneth A. Gross

Enclosure

FEB 17 4 54 PM '95
FEDERAL ELECTION
COUNSEL

97043802715

STATEMENT OF DESIGNATION OF COUNSEL

NO: 4091
NAME OF COUNSEL: Kenneth A Gross
ADDRESS: 3 Kadden Ave Suite 1100 + Floor
1440 New York Avenue NW
Washington DC 20005
TELEPHONE: 202-371-7007

FEB 11 4 51 PM '95
 OFFICE OF THE
 SECRETARY OF THE
 COMMISSION

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.

Feb 10, 1995
 Date

Beth Cataldo
 Signature

RESPONDENT'S NAME: Beth A. Cataldo
ADDRESS: 424 West End Ave
New York, New York 10022-4873

HOME PHONE:
BUSINESS PHONE:

97043802716



FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

FAXED
2/21/95

February 21, 1995

BY TELECOPIER

Kenneth A. Gross
Skadden, Arps, Slate, Meagher & Flom
1440 New York Avenue, N.W.
Washington, DC 20005

Re: MUR 4091 (Beth A. Cataldo)

Dear Mr. Gross:

I write to confirm our meeting on February 22, 1995 at 11:00 a.m. regarding the above-referenced matter. Kenneth Kellner and Jane Whang of the Office of General Counsel will be joining us. Please let me know if you plan to bring anyone with you. Also, please consult with Ms. Cataldo prior to the meeting so that we may reschedule her deposition in the event that we cannot reach an agreement.

Thank you for your cooperation with this matter. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

James S. Portnoy
Attorney

97043802717

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF THE

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

APR 5 11 26 AM '95

FAX (202) 393-5760

(202) 371-7000

DIRECT DIAL
(202) 371-7007

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MOSCOW
PARIS
PRAGUE
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TORONTO

April 4, 1995

VIA FEDERAL EXPRESS

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

Re: MUR 4091 - Beth Cataldo

Dear Mr. Portnoy:

Pursuant to our discussions, this letter provides on behalf of Beth Cataldo, an account of what transpired regarding the signing of the money orders which are the subject of this action. We have provided affidavits where possible in support of the description of events.

Ms. Cataldo worked on the Tsongas Committee ("the Committee") staff as the finance director starting in September 1991. In this capacity, Ms. Cataldo's central responsibility was to raise funds for the Committee. As the Committee staff was structured, the finance director was not the Committee's designee for receiving campaign funds under 11 C.F.R. § 102.9. The Committee never provided Ms. Cataldo with any Federal Election Commission ("the Commission") materials nor the opportunity to attend Commission informational seminars. As was known by the Committee, Ms. Cataldo had never previously been employed in fundraising.

Mr. James Lichoules was a supporter of the Committee. He was known to the Committee as a top donor

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prior to Ms. Cataldo's employment because he contributed \$1,000 in April 1991, five months prior to Ms. Cataldo's employment. Ms. Cataldo began speaking over the phone with Mr. Lichoulas along with innumerable other donors, starting in mid-September 1991. Ms. Cataldo did not meet Mr. Lichoulas in person until December 1991. In early October 1991, Mr. Lichoulas pledged to raise \$10,000 for the Committee through a reception at his home at which Paul Tsongas was to appear. This event was placed on Mr. Tsongas' schedule several times in late October and November, only to have the date changed and the reception rescheduled. The Committee knew of Mr. Lichoulas' commitment to the Tsongas candidacy because of his prior contribution, telephone conversations between Mr. Lichoulas and Mr. Tsongas and also, because Mr. Lichoulas was a neighbor of the Campaign's national political director. The sentiment at the Committee throughout the fall of 1991 was that Mr. Lichoulas would indeed make good on his pledge to raise funds for Mr. Tsongas.

In late December 1991, Mr. Tsongas, accompanied by Ms. Cataldo, attended a reception at the Mercantile Bank in Boston. Mr. Lichoulas was on the Board of Directors of this bank, and was also in attendance at this reception. At the reception, Mr. Lichoulas assured Mr. Tsongas that he would in fact raise the promised funds from members of the Greek community associated with the bank, whether or not he hosted an event at his home. Mr. Lichoulas informed Mr. Tsongas and the staff that he had recently moved to a new home, and was having trouble getting the home decorated in time to host an event.

On December 28, 1991, Mr. Lichoulas called the Tsongas Committee and asked that someone come to his home that night to pick up contributions. Ms. Cataldo went to Mr. Lichoulas' home that evening. At his home, Mr. Lichoulas gave Ms. Cataldo a handwritten list of names and addresses of forty individuals on a white lined piece of paper. Mr. Lichoulas informed Ms. Cataldo that he had contacted the individuals and they had agreed to contribute \$250 each to the reception at his home. Also, at that meeting, Mr. Lichoulas gave Ms. Cataldo two personal checks for \$250 each from two individuals on the list. The names of those two individuals were checked off on the piece of paper containing the forty names.

Between 2:00-2:30 p.m. on Monday, December 30, 1991, Mr. Lichoulas contacted the Committee and spoke with Ms. Cataldo, advising her that he had obtained the remaining \$9,500 in donations for the Committee from the individuals and arranged for the donations to be picked up at the Mercantile Bank in Boston. Later that afternoon, Ms. Cataldo went to the Mercantile Bank and picked up an envelope left by Mr. Lichoulas for the Committee, and returned to the Committee's office. Upon returning to the Committee's office, Ms. Cataldo was surprised to discover that the package contained 38 undated and unsigned money orders, rather than the expected 38 personal contribution checks from the listed individuals.

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This unexpected turn of events created considerable confusion, and the Campaign Manager, Dennis Kanin, was out of the office during the day that day and was unavailable to provide direction to the staff. Ms. Cataldo tried to contact Mr. Lichoulas by telephone, but to no avail. In haste, Ms. Cataldo decided to have the staff and volunteers in the office complete the money orders made payable to the Committee, and then to check with the Campaign Manager upon his return later that day to determine whether the funds should be deposited. In the confusion of the moment, Ms. Cataldo thought that the contributions could later be reattributed to the listed donors, or if that was not feasible, the money orders could be returned without being deposited. At the time, and in the haste of the campaign, neither Ms. Cataldo nor the other staffers was aware that the filling out of money orders, without their being deposited -- which would only occur with the approval of the Campaign Manager -- was in and of itself a possible violation of law. In filling out the money orders, neither Ms. Cataldo nor the staffers thought that they were taking actions that were irreversible in any sense. Clearly, with the events transpiring in a matter of an hour on one of the busiest days of the campaign, Ms. Cataldo gave insufficient thought to her actions, a careless act for which she has already paid a heavy price.

Because of a family medical emergency, Mrs. Cataldo left the office unexpectedly at approximately 4:30 - 5:00 p.m. on December 30, 1991, with the understanding that the money orders would not be included in

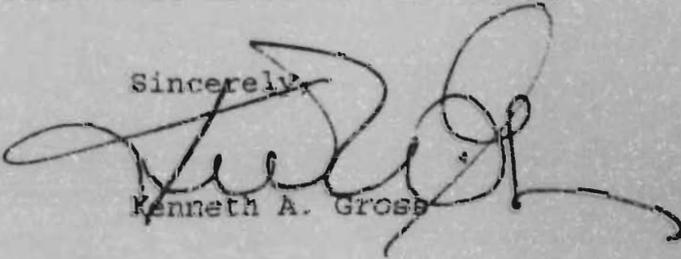
James S. Portnoy
April 4, 1995
Page 4

any deposit without the approval of the Campaign Manager, whose return was expected later that afternoon. Ms. Cataldo returned to the campaign that evening.

Upon Mr. Kanin's return to the Committee office in the early evening, he with Ms. Cataldo in the room, sought the advice of counsel regarding the money orders. Per legal advice given to Mr. Kanin and Ms. Cataldo, the money orders were returned to Mr. Lichoulas by hand. Also, per the advice of counsel, the money orders were labeled "not for use as intended," thereby rescinding any contributions. This course of action was overseen and completed immediately by the Campaign Manager.

As I have stated during our conversations, putting the considerable legal arguments aside, Ms. Cataldo never intended to violate any law and certainly did not commit a willful violation. After you have had a chance to review this statement with supporting affidavits and information, please call me so we can settle this matter.

Sincerely,



Kenneth A. Gross

Attachments

Affidavit of Dennis Kanin
Affidavit of Andrew Paven
Affidavit of Lorraine Alexander
Financial Information of Beth Cataldo

97043802721

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

APR 5 11 26 AM '95

BEFORE THE FEDERAL ELECTION COMMISSION

RE: MUR 4091

I, Dennis R. Kanin, on oath depose and state:

I was the Campaign Manager of the Tsongas Committee from April 1991 until the conclusion of the candidacy in or about March of 1992;

In the Fall of 1991, I became aware that Jim Lichoulas had agreed to raise \$10,000 for the Committee;

I was not at the Tsongas Committee office on Monday, December 30, 1991 until after 6:00 P.M. in the afternoon;

After I returned, it was brought to my attention that Ms. Cataldo had received money orders from Mr. Lichoulas. I was informed that there was an issue concerning the money orders and I took steps to rectify the situation;

Specifically, in the evening on December 30, 1991, I called Michael Rail, Esq., a Washington, D.C. lawyer associated with the Tsongas Committee, for advice with respect to the money orders. As a result of my conversation with Mr. Rail, I had the money orders returned uncashed to Mr. Lichoulas as soon as possible;

In conversation with Ms. Cataldo on the evening of December 30, 1991, she informed me that she had been surprised to find that Mr. Lichoulas had provided blank money orders to the Committee and not personal checks;

From what Ms. Cataldo said to me and from her demeanor, it appeared to me that she was genuinely surprised that Mr. Lichoulas gave her blank money orders instead of personal checks from donors; and

On December 31, 1991, I spoke to Mr. Lichoulas on the phone and he said that the money orders in question were intended to represent funds from separate individuals with accounts at the Mercantile Bank;

Signed under the pains and penalties of perjury, this 30th day of March, 1992.

Dennis R. Kanin
Dennis R. Kanin

9704302722

BEFORE THE FEDERAL ELECTION COMMISSION

RE: MJR 4091

I, Andrew Paven, on oath depose and state:

I was employed as the national trip director as a full-time staff person by the Tsongas Committee from June, 1991 until the conclusion of the candidacy in or about April of 1992;

In or about October of 1991 I became aware that Mr. Jim Lichoulas had agreed to raise \$10,000 on behalf of the Committee through an event to be held at his home in Reading, MA;

The Lichoulas fundraising event was placed on Paul Tsongas' schedule several times that fall, but was repeatedly re-scheduled for various reasons;

I was at work at the Tsongas Committee office on Monday, December 30, 1991 when Mr. Lichoulas called in the afternoon and Ms. Cataldo left the Committee office to go pick up the contributions;

My desk was very close to that of Ms. Cataldo, and when she returned from the Mercantile Bank that afternoon, I never observed anyone associated with the Committee objecting to the signing of money orders, nor did I observe any staff of the Committee instructing anyone not to sign the money orders;

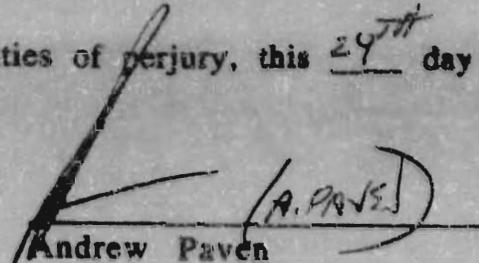
During this entire brief incident, I never observed or heard anyone asking staffers to date the money orders any date other than December 30, 1991 and to the best of my knowledge, all of the money orders were dated December 30, 1991;

At the time the money orders were signed, the staff of the Committee was unaware that the signing of the money orders constituted a possible violation of any law, nor was there any intent whatsoever on the part of anyone signing the money orders to violate any law;

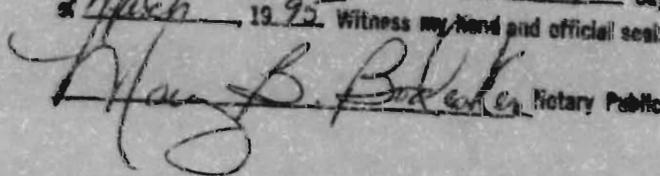
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At the time the money orders were signed, it was my understanding that the Campaign Manager, Dennis [redacted], was going to have to sign off on this activity before a deposit of these money orders would be made.

Signed under the pains and penalties of perjury, this 29th day of March, 1995.


Andrew Paven
530 Tobacco Quay
Alexandria, VA 22314

97043802724

City/County of Alameda Commonwealth/State of Virginia
Sworn to and subscribed before me this 29th day
of March, 1995. Witness my hand and official seal.

Notary Public

My Commission Expires 1/31/98

BEFORE THE FEDERAL ELECTION COMMISSION

RE: MLIR 4091

I, Lorraine Alexander, on oath depose and state:

1. I was employed by the Tsongas Committee ("the Committee") from September 1991 until May of 1992 and served as the Committee's co-national finance director;

2. In or about October of 1991 I became aware that Mr. Jim Lichoulas had agreed to raise \$10,000 on behalf of the Committee through an event to be held at his home in Reading, MA;

3. In mid-December 1991 Beth Cataldo, Paul Tsongas and I went to a reception for prominent members of the Greek community at the Mercantile Bank in Boston, MA, where Mr. Lichoulas was on the Board of Directors;

4. During this reception, attendees informed us that they had agreed to contribute \$250.00 to the Tsongas candidacy through the Lichoulas house party;

5. On Saturday, December 28, 1991 I was working at the Tsongas Committee office and at the end of that day, pursuant to a call from Mr. Lichoulas, Ms. Cataldo traveled to Mr. Lichoulas' home in Reading, MA to pick up the \$10,000 in contributions Mr. Lichoulas claimed he had raised;

6. I did not see Ms. Cataldo at the Committee office on Sunday, December 29 because she was travelling to Pittsburgh, PA and Cleveland, OH for fundraising events on behalf of the Committee;

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7. I was at work at the Tsongas Committee office on Monday, December 30, 1991 when late in the afternoon Mr. Lichoulas called the Committee and Ms. Cataldo left the office to pick up the contributions Mr. Lichoulas claimed he had raised and were waiting to be picked up at the Mercantile Bank;

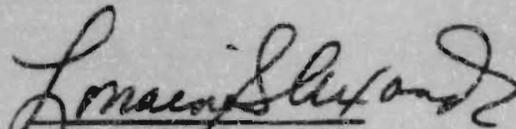
8. My desk was next to that of Ms. Cataldo, and when she returned from the Bank that afternoon, I never observed anyone associated with the Committee objecting to the signing of the money orders, nor did I observe any staff of the Committee instructing anyone not to sign the money orders;

9. No staffers were asked by anyone to date the money orders any date other than December 30, 1991 and to the best of my knowledge, all of the money orders were dated December 30, 1991;

10. At the time the money orders were signed, this was done in extreme haste, and it was our understanding that the money orders were being signed provisionally and subject to the approval of the Campaign Manager, Dennis Karin; given that all campaign decisions were made directly by Dennis Karin, whether or not the money orders would be deposited by the Committee was a decision that would be made by Mr. Karin;

11. At the time the money orders were signed, neither myself nor any other staff of the Committee was aware that the signing of the money orders was a potential violation of any law, nor was there any intent whatsoever on the part of anyone signing the money orders to violate any law.

Signed under the pains and penalties of perjury, this 31 day of March 1995.


LORRAINE ALEXANDER

97043802726



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

July 19, 1995

By Telecopier

Kenneth A. Gross
Skadden, Arps, Slate, Meagher & Flom
1440 New York Avenue, N.W.
Washington, DC 20005

Re: MUR 4091 (Beth A. Cataldo)

Dear Mr. Gross:

I write to confirm that your client, Beth A. Cataldo, has consented to appear for a deposition in the above-referenced matter. The deposition will take place on Friday, July 21, 1995 at 10:30 a.m. in the Commission's offices.

Thank you for your assistance with this matter. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

James S. Portnoy
Attorney

97043802727



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 22, 1995

Kenneth A. Gross
Skadden, Arps, Slate, Meagher & Flom
1440 New York Avenue, N.W.
Washington, DC 20005

Re: MUR 4091 (Beth A. Cataldo)

Dear Mr. Gross:

I write to advise you that I will be leaving the Commission on September 22, 1995. Henceforth, Jane Whang will be representing the Commission in the above-referenced matter. She may be reached at (202) 219-3690.

Sincerely,

James S. Portnoy
Attorney

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BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

MAR 27 4 11 PM '96

In the Matter of

Beth A. Cataldo

)
)
) MUR 4091
)

SENSITIVE

GENERAL COUNSEL'S REPORT

On October 19, 1994, the Commission found reason to believe that Beth A. Cataldo knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441f, provisions of the Federal Election Campaign Act (the "Act"), as amended. See General Counsel's Report, dated October 6, 1994. The Commission also at that time approved a proposed conciliation agreement and directed the Office of General Counsel to enter into pre-probable cause conciliation with Ms. Cataldo.

Ms. Cataldo was the Fundraising Director for the Tsongas Committee, Inc. (the "Committee") from September 1991 through December 1991. On December 30, 1991, she received thirty-eight unsigned and undated money orders for \$250 each from James T. Lichoulas, a contributor to the Tsongas Committee. She proceeded to sign and date three of the money orders and also requested other campaign staffers to sign and date the money orders. The money orders were signed and dated different dates, ranging from December 25, 1991 to December 30, 1991. They were then collected and given to Mary Wong, the campaign official responsible for depositing contributions. These events led the Commission to find reason to believe that Ms. Cataldo knowingly and willfully accepted

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excessive contributions and contributions in the name of another, in violation of 2 U.S.C. §§ 441a(f) and 441f.¹

This Office has conducted investigations and conciliation negotiations with the respondent since October 1994. Ms. Cataldo asserted that she did not violate the Act and that she "certainly did not commit a willful violation." Attachment 2 at 4; *see also* Attachment 1. To support her contention that she did not act knowingly and willfully, Ms. Cataldo's counsel submitted affidavits by witnesses to the events underlying this matter. The affiants did not attest to whether Ms. Cataldo acted knowingly and willfully, and this Office considered the affidavits insufficient to support Ms. Cataldo's contention that she had not acted knowingly and willfully.

On July 21, 1995, this Office deposed Ms. Cataldo.² Ms. Cataldo testified that she did not act with the knowledge that she was violating the law. However, testimony of other staff members regarding the events in this matter contradicts Ms. Cataldo's account.³ Further, this Office has obtained evidence that suggests Ms. Cataldo acted knowingly and willfully. For example, although the money orders were signed on December 30, 1991,

¹ The Commission also found reason to believe that Mr. Lichoulas had knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441f. On February 14, 1995, the Commission accepted Mr. Lichoulas' offer to pay a \$24,500 civil penalty in this matter and closed the file with respect to him.

² Ms. Cataldo initially refused to testify before the Commission in order to preserve her Fifth Amendment rights in the Justice Department's investigation of this matter. This Office obtained an agreement from the Justice Department to provide Ms. Cataldo with a letter stating that it would not use her deposition testimony against her. Based on that assurance, Ms. Cataldo agreed to testify.

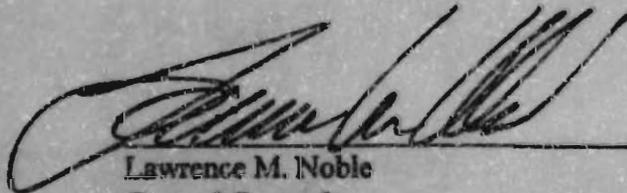
³ Ms. Cataldo testified that she was unaware of the Act's prohibitions and that no one ever directly attempted to discourage her solicitation of signatures for \$9,500 in blank money orders that had been given to her by Jim Lichoulas, a Tsongas Committee contributor. In contradiction, committee staffers Mary Wong and David Goldman testified previously that some employees objected to Ms. Cataldo's attempt to obtain signatures. General Counsel's Report in LRA 424, at 6-7. In addition, Mr. Goldman testified that he attempted to dissuade Ms. Cataldo from soliciting signatures but that she refused to stop. *Id.*

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Ms. Cataldo appears to have personally signed two money orders with the date "Dec. 30, 1991" while signing a third money order with the date "12/27/91" in a possible attempt to conceal the true nature of the transaction.

Accordingly, this Office is preparing a General Counsel's Brief to address counsel's arguments and to recommend that the Commission find probable cause to believe that Ms. Cataldo violated the Act.

3/27/96
Date


Lawrence M. Noble
General Counsel

97043802731

Attachments

1. Letter from Daniel J. O'Connell, III (November 30, 1994)
2. Letter from Kenneth A. Gross (April 4, 1995) (attachments omitted)

Staff Assigned: Jane J. Whang

97043802732



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 1, 1996

Kenneth A. Gross
Skadden, Arps, Slate, Meagher & Flom
1440 New York Ave., N.W.
Washington, D.C. 20005

RE: MUR 4091 (Beth A. Cataldo)

Dear Mr. Gross:

This is to inform you that I will be leaving the Commission on April 30, 1996. Delanie DeWitt Painter will be representing the Commission in the above-referenced matter. She may be reached at (202) 219-3690.

Sincerely,


Jane J. Whang

97043802733



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 23, 1998

Kenneth A. Gross, Esq.
Skadden, Arps, Slate, Meagher & Flom
1440 New York Ave., N.W.
Washington, D.C. 20005-2111

RE: MUR 4091
Beth A. Cataldo

Dear Mr. Gross:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found reason to believe that your client, Beth A. Cataldo, violated 2 U.S.C. §§ 441a(f) and 441f, and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

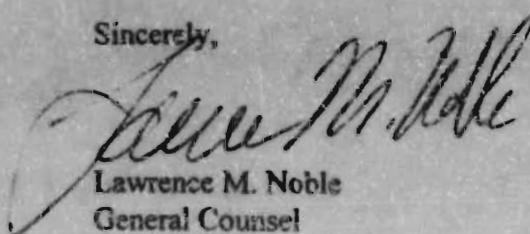
If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel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

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 60 days, to settle this matter through a conciliation agreement.

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

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Brief

97043802735

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
 Beth A. Cataldo) MUR 4091
)

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On October 19, 1994, the Commission found reason to believe that Beth A. Cataldo knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended (the "Act").¹ The Commission also at that time approved subpoenas for documents and depositions. On July 21, 1995, this office deposed Ms. Cataldo.

Ms. Cataldo was the Fundraising Director for the Tsongas Committee, Inc. (the "Committee") from September 1991 through December 1991.² On December 30, 1991, Ms. Cataldo accepted an excessive contribution from James T. Lichoulas totaling \$9,500 in the form of 38 blank \$250 money orders. Ms. Cataldo brought the blank money orders back to the Committee's office, signed and dated some of them herself, and requested other staff members to sign them. The Committee did not deposit any of the money orders, but instead returned them to Mr. Lichoulas.

The evidence obtained in this Office's investigation reveals that Ms. Cataldo acted knowingly and willfully in accepting excessive contributions, and in making and

¹ The Commission opened this matter based upon information obtained from a newspaper article, an investigation by the Department of Justice, and the Commission's audit of the 1992 primary presidential campaign of the Tsongas Committee, Inc.

² Ms. Cataldo was and still is a lawyer and a member of the Massachusetts Bar.

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accepting contributions in the name of another. Therefore, this Office recommends that the Commission find probable cause to believe that Ms. Cataldo knowingly and willfully violated 2 U.S.C. §§ 441f and 441a(f).

II. BACKGROUND

A. LAW

The Act prohibits individuals from making contributions to any candidate and his or her authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. 2 U.S.C. § 441a(a)(1)(A). Further, no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate in violation of any limitations imposed on contributions and expenditures. 2 U.S.C. § 441a(f).

Moreover, no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person. 2 U.S.C. § 441f. Thus, no person shall make a contribution in the name of another; knowingly permit his or her name to be used to effect such a contribution; knowingly help or assist any person in making a contribution in the name of another; or knowingly accept a contribution made by one person in the name of another. See 11 C.F.R. § 110.4(b)(1)(iii). Contributions in the name of another include giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money to the recipient candidate or committee at the time the contribution is made. 11 C.F.R. § 110.4(b)(2)(i).

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An agent of a political committee may solicit and accept contributions on the committee's behalf. See 2 U.S.C. § 432(a). A contribution shall be considered to be made on the date that the contributor relinquishes control over the contribution and delivers it to the candidate, committee, or agent of the political committee. 11 C.F.R. § 110.1(b)(6); see *U.S. v. Hankin*, 607 F.2d 611, 615 (3rd Cir. 1979) (decided prior to the promulgation of 11 C.F.R. § 110.1(b)(6) and holding that the "criminal act of making the illegal contribution is complete before the deposit of the checks").

The date of "acceptance" of a contribution on behalf of the committee is the date that the contribution is delivered to the committee's agent. See 11 C.F.R. § 102.8(b)(2) (if individual receives on behalf of a committee a contribution greater than \$200, he or she must forward to the committee the contribution, identification of the contributor, and the date of receipt of the contribution, which "shall be the date such person obtains possession of the contribution"); Advisory Opinion ("AO") 1992-29 (receipt of contributions by clerical employee assigned to open envelopes constitutes receipt by committee); AO 1980-42 (ticket sale proceeds from fundraising concert considered to be contributions received by committee upon receipt by the concert promoter).

The Act also governs violations of law that are knowing and willful. See 2 U.S.C. §§ 437g(a)(5)(C) and 437g(d). Actions that are "knowing and willful" are those that were "taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed. May 3, 1976). The knowing and willful standard requires knowledge that one is violating the law. *FEC v. John A. Dramasi for Congress Committee*, 640 F. Supp. 985 (D.N.J. 1986). A knowing and willful violation may be established by showing that "the defendant acted deliberately

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and with knowledge that the representation was false." *U.S. v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). Willful behavior may also be inferred from "the handling of one's affairs to avoid making the records usual in transactions . . . and [from] conduct, the likely effect of which would be to mislead or to conceal." *Spies v. U.S.*, 317 U.S. 492, 499 (1943).

B. Facts

On December 30, 1991, James T. Lichoulas told Ms. Cataldo that he had left an envelope of contributions intended for the Committee with the head teller at the Mercantile Bank in Boston.³ Ms. Cataldo picked up the envelope and returned to the Committee's offices. The envelope contained 38 undated, unsigned money orders for \$250 each, totaling \$9,500. The money had come from Mr. Lichoulas' personal bank account.

Although the envelope did not provide any identification of the contributor or contributors of the funds, Ms. Cataldo did not contact Mr. Lichoulas to obtain this information or to clarify any aspect of the transaction. Ms. Cataldo claims that she unsuccessfully attempted to contact Mr. Lichoulas when she realized the money orders were blank. Rather than waiting until the facts could be clarified, Ms. Cataldo signed and dated several of the money orders herself and requested that other staff members sign the

³ Mr. Lichoulas was a director on the board of the Mercantile Bank and a supporter of the Committee. He had contributed the legal maximum of \$1,000 to the Committee in the spring of 1991 and had expressed to Ms. Cataldo an interest in organizing a fundraiser at his house for the Committee. Ms. Cataldo claims that two days before these events, Mr. Lichoulas gave her two contribution checks and a list of contributors for this fundraiser, and told her he would give the rest of the funds to her in two days. She contends that she believes the money orders were from the contributors on the list. However, she has provided no evidence to substantiate her account, or the existence of the list of contributors.

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money orders. Neither Ms. Cataldo nor any of the staff members who signed the money orders had paid for them.

A campaign staff member was concerned about Ms. Cataldo's actions and alerted Mary Wong and David Goldman, campaign officials in a nearby office. After discussing the matter with Ms. Wong and the campaign staffer, Mr. Goldman told Ms. Cataldo that he thought what she was doing was a "really bad idea" and that she should not do it. However, she continued to obtain signatures from staff members on the blank money orders.⁴

The money orders were made payable to the Committee and dated different dates, ranging from December 25, 1991 to December 30, 1991. Ms. Cataldo's signature appears on three of the money orders: two of which are dated "Dec. 30, 1991," and a third, which is dated "12/27/91."⁵ All of the signed money orders were ultimately given to Ms. Wong, the campaign official responsible for depositing the contributions, but she did not deposit them. Instead, the campaign returned the money orders to Mr. Lichouias.

Although she was the Committee's Fundraising Director, Ms. Cataldo claims that she knew very little about the limitations and prohibitions on contributions.⁶ She claims that she intended to check the legality of the transaction with Dennis Kanin, the campaign

⁴ Ms. Cataldo claims that she does not recall Mr. Goldman telling her to stop; however, testimony of both Mr. Goldman and Ms. Wong contradicts Ms. Cataldo. Ms. Cataldo did recall that there was resistance to the signing of the money orders by at least one campaign staff member, but claims that it was only "after the fact." She identified the staff member who resisted the transaction as the same individual who complained to Ms. Wong and Mr. Goldman.

⁵ Ms. Cataldo claims that she did not instruct staff members to sign the money orders with different dates and could not explain why the money orders had different dates. She also claims not to remember whether she had signed any of the money orders herself.

⁶ However, Dennis Kanin testified that Ms. Cataldo may have had an FEC manual on her desk.

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manager, when he returned to the office from a lengthy meeting. While waiting for Mr. Kanin to return from the meeting, she did not discuss the transaction with Ms. Wong, who processed Committee contributions, or research the issue herself. Ms. Cataldo contends that she asked other staff members to sign the money orders because she knew that the blank money orders could not be deposited without signatures, and she wanted to have the money orders ready for quick deposit so that they would be reported in year-end disclosure reports. She contends that she misunderstood the law on reattributions, and believed the money orders could be reattributed to the actual contributors later.

Ms. Cataldo testified that she was aware that the lawful individual contribution limitation was \$1,000. While she admits that she knew that Mr. Lichoulas had contributed his maximum legal amount to the Committee, she contends that "it had not occurred to [her] that the money orders had all c[o]me from Jim Lichoulas's account." In addition, Ms. Cataldo claims that she did not intend to violate the Act by requesting staff members to sign money orders for which they did not pay. She contends that she was not aware of the 2 U.S.C. § 441f prohibition on making contributions in the name of another.

Finally, Ms. Cataldo asserts that she should not be held responsible for violations of the Act, citing provisions of the Act that indicate that the treasurer of a committee shall keep account of contributions and be responsible for a committee's compliance with the Act. See 2 U.S.C. § 432(c) and 11 C.F.R. § 104.14(d). Because the money orders had been returned to Mr. Lichoulas, Ms. Cataldo argues that the contributions had not been "accepted" by the Committee and therefore no violation had occurred.

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III. ANALYSIS

The available evidence and the law support a finding of probable cause to believe that Ms. Cataldo knowingly and willfully violated 2 U.S.C. §§ 441f and 441a(f). As noted, Ms. Cataldo's testimony reflects inconsistencies and has been contradicted by other evidence including testimony by other witnesses.

A. Contributions in the Name of Another

Ms. Cataldo's actions reflect a knowing and willful violation of the Act's prohibition on contributions made in the name of another. See 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b). The Act and the Commission's regulations forbid any person from knowingly using his or her own name to effect a contribution in the name of another, knowingly helping or assisting others to effect such a contribution, or knowingly accepting such a contribution. *Id.* Ms. Cataldo knowingly and willfully permitted her name to be used to effect a contribution in the name of another, helped and assisted, and indeed, directed others in making contributions in the name of another, and accepted contributions made in the name of another. *Id.*

Mr. Lichoulas intended to contribute \$9,500 to the Committee with the money orders and left them at the bank for Ms. Cataldo. Upon discovering that the money orders were blank, Ms. Cataldo did not return them to the bank. She claims she attempted to, but could not reach Mr. Lichoulas for an explanation. Ms. Cataldo did not wait to process the money orders until she could clarify the source of these contributions and get some explanation of this unusual transaction from Mr. Lichoulas. Instead, without obtaining any explanation of who contributed the money orders and knowing that the money orders could not be deposited without signatures, Ms. Cataldo immediately signed

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some of the money orders herself and requested that other campaign staff sign the rest.⁷ None of the staff who signed the money orders had paid for them. Thus, Ms. Cataldo was fully aware that the names and dates that she and the other staff members wrote on the money orders were not the correct identification of the contributor or contributors of the funds. Whether Ms. Cataldo was aware that the funds all came from Mr. Lichoulas or, as she claims, were contributed by a number of other individuals is irrelevant. Ms. Cataldo was aware that she was assisting and facilitating the making of contributions in the names of individuals who did not contribute the funds.

Moreover, the evidence suggests that Ms. Cataldo's violation was knowing and willful. Her testimony is inconsistent with the evidence and does not support her claim of innocence. Specifically, Mr. Goldman's testimony contradicts her claim that she does not recall other staff members objecting to the transaction. Mr. Goldman clearly recalls twice telling Ms. Cataldo that the transaction was a "really bad idea" and that she should not proceed, and that she blatantly refused to heed his admonitions. Ms. Wong's testimony supports Mr. Goldman's version of events. Statements provided by Ms. Cataldo from other staff do not undermine Mr. Goldman's account, since those staff may not have overheard or been present when Mr. Goldman spoke with Ms. Cataldo.

In addition, despite her position as Fundraising Director and her legal education, Ms. Cataldo claims not to have had knowledge of the Act or the Commission's regulations. However, she testified that she was careful not to sign all the money orders

⁷ Ms. Cataldo testified: "I assumed that [the money orders] were from the people's bank accounts that were on the list [of potential donors]. . . I was not going to fill out these people's names from this list on these money orders. . . [instead] I asked [people] to sign them."

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because she knew that there was a \$1,000 contribution limitation. This testimony is inconsistent with her assertion that she believed the contributions could all be reattributed, and suggests her willful intent. Although the transaction was highly unusual, Ms. Cataldo made no attempt to check the legality of her actions in any written materials such as the Act and Commission regulations, Commission publications, or manuals. Nor did Ms. Cataldo ask for advice from Ms. Wong, who Ms. Cataldo considered to be an expert in election law and who was present in the Committee offices at the time. Indeed, it is remarkable that Ms. Cataldo neither asked Ms. Wong's opinion nor asked her to sign any of the blank money orders. Moreover, it is surprising, given Ms. Cataldo's legal background, that she would not question whether individuals could legally sign money orders that they had not purchased.

Further, Ms. Cataldo's explanation of why she was compelled to direct staff to fill out the money orders immediately is inconsistent with her claim that she planned to ask Mr. Kanin about the transaction. Ms. Cataldo's claims that she misunderstood the law on reattribution and that she was concerned Mr. Kanin might return to the office after staff had gone home are not convincing, since staff could have signed the money orders the next morning, if Mr. Kanin had approved the action, and the deposit could still have been included in the same reporting period. Indeed, Ms. Cataldo's actions are consistent with the actions of an individual who knows that she is doing something illegal.

Further evidence of Ms. Cataldo's knowing and willful intent appears on the signed money orders themselves, which are dated different dates even though the transaction occurred on one day. Although she claims not to recall signing any of the money orders, Ms. Cataldo's own signature with two different dates appears on the

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money orders. The signed and misdated money orders support the conclusion that Ms. Cataldo sought to conceal the true origin of these contributions, and that her violation was knowing and willful. See *Spies v. U.S.*, 317 U.S. at 499 (willfulness indicated where conduct is "to mislead or to conceal"); 2 U.S.C. § 441f and 11 C.F.R. § 110.1(b)(6).

Ms. Cataldo also knowingly and willfully violated the Act's prohibition on acceptance of contributions in the name of another. See 2 U.S.C. § 441f. As Fundraising Director for the Committee, Ms. Cataldo was the Committee's agent and had the authority to accept contributions. See 11 C.F.R. §§ 102.8(a), 102.9, 110.1(b)(6); AO 1992-29. This authority was established by her acceptance of other contributions during the campaign. Mr. Lichoulas relinquished control over the contributions when he left them at the bank for Ms. Cataldo's receipt. See 11 C.F.R. § 110.1(b)(6). The Act forbids not only treasurers, but any person from accepting a contribution in the name of another. See 2 U.S.C. § 441f.

Contrary to Ms. Cataldo's assertion, her violation is not vitiated by the fact that the Committee did not deposit the signed money orders but instead returned them to Mr. Lichoulas. Where an agent authorized to accept payments on behalf of a principal receives payments for a principal, such payments are imputed to the principal, regardless of whether the principal deposits the payments. See 11 C.F.R. § 102.8; *Liberty Mutual Insurance Co. v. Enjay Chemical Co.*, 316 A.2d 219, 222 (Del. Super. Ct. 1974) (funds paid to agent of insurance company considered to have been received by insurance company, despite fact that agent fraudulently converted the funds for personal use); 3 Am. Jur. 2d Agency § 279 at 780 (payment made to an agent having the authority to receive or collect payment is equivalent to payment to principal and is complete when

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money is delivered into the agent's hands, regardless of agent's misappropriation of money).⁶ As the Committee's agent authorized to accept contributions, Ms. Cataldo accepted the contributions made in the name of another on behalf of the Committee when the staff returned the signed money orders to her. See 11 C.F.R. §§ 110.4(b) and 110.6(b)(1); AO 1992-29; *U.S. v. Hankin*, 607 F.2d at 614 ("act of making a contribution does not require a deposit of the checks").

While the Committee ultimately returned the money orders to the contributor, Ms. Cataldo made no attempt to return the contributions to Mr. Lichoulas or to obtain the correct signatures for the money orders before collecting them for deposit. Further, when Ms. Cataldo accepted the signed money orders for deposit from the staff members, she knew that the signatures on the money orders were not those of the true contributor or contributors. Therefore, she accepted contributions in the name of another, and did so knowingly and willfully. See 11 C.F.R. § 102.8(a); *U.S. v. Hopkins*, 916 F.2d at 214 (willfulness may be shown by evidence that "defendant acted deliberately and with knowledge that the representation was false").

B. Excessive Contributions

No official or employee of a committee shall accept a contribution in violation of the limitations. See 2 U.S.C. § 441a(f). Ms. Cataldo was an employee of the Committee and, as previously noted, had the authority to accept contributions on behalf of the Committee. She accepted excessive contributions from Mr. Lichoulas on December 30,

⁶ See also *Maryland Casualty Co. v. U.S.*, 251 U.S. 342, 347 (1920) (premiums collected by an agent of an insurance company but not paid to the treasurer of the insurance company, are part of the income "received" by the principal for the purposes of annual income received pursuant to federal income tax laws because "receipt by an agent is regarded as receipt by his principal").

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1991 when she picked up the money orders from the Mercantile Bank. See *Maryland Casualty Co. v. U.S.*, 251 U.S. at 347. She did not return the money orders to Mr. Lichoulas. Instead, she prepared the money orders for deposit by asking staff members to sign them to make them negotiable. Thus, Ms. Cataldo accepted contributions totaling \$9,500 from Mr. Lichoulas, in excess of the individual contribution limitation of \$1,000 at 2 U.S.C. § 441a(a)(1)(A).

The evidence supports a finding that Ms. Cataldo accepted these excessive contributions knowingly and willfully. She was aware of the \$1,000 contribution limitation for individuals at 2 U.S.C. § 441a(a)(1)(A). She also knew that Mr. Lichoulas had already contributed his maximum amount. Nevertheless, Ms. Cataldo failed to take any precautions to ensure that the money orders were permissible contributions and recklessly intended that the money orders be deposited before clarifying their source. Indeed, despite the apparent peculiarity of 38 blank money orders, Ms. Cataldo failed to question Mr. Lichoulas about the origin or the source of the funds. Her claim that she never considered the possibility that the funds for the money orders came from Mr. Lichoulas strains credulity. In addition, she ignored Mr. Goldman's warning to discontinue the signing and collecting of the money orders. Her actions reflect more than a lack of judgment. They reflect a knowing and willful intent. See *United States v. DeGarces*,

518 F.2d 1156, 1160 (2d Cir. 1975) (requisite guilty knowledge may be inferred when "despite the extremely unusual circumstances surrounding the transaction, appellee failed to make any serious inquiry"). Therefore, Ms. Cataldo knowingly and willfully accepted excessive contributions from Mr. Lichoulas.

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In conclusion, there is probable cause to believe that Ms. Cataldo knowingly and willfully violated the Act by assisting others in making contributions in the name of another, allowing her name to be used to effect contributions in the name of another, and accepting contributions made in the name of another. 2 U.S.C. § 441f. In addition, there is probable cause to believe that Ms. Cataldo knowingly and willfully accepted excessive contributions from Mr. Lichoulas when she received the envelope of blank money orders totaling \$9,500. 2 U.S.C. § 441a(f).

III. RECOMMENDATION

I. Find probable cause to believe that Beth A. Cataldo knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441f.

5/23/96
Date


Lawrence M. Noble
General Counsel

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SKADDEN, ARPS, SLATE, MEAGHEN & FLOM

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

(202) 371-7000

FAX (202) 393-6780

DIRECT DIAL
(202) 371-7000

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June 12, 1996

Via Facsimile

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

Re: MUR 4091. Beth Cataldo

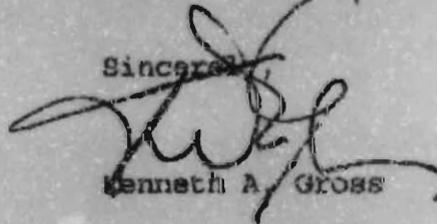
Dear Ms. Painter:

Per our recent conversation, this letter constitutes a request for a 20 day extension of time in the above-referenced matter. As we discussed, this time is needed to prepare a response because most of the allegations against Ms. Cataldo are based on new factual allegations obtained in deposition testimony. Please note that we received the brief on May 30, 1996 (the delay in mailing may be attributable to the Memorial Day weekend). This would make the original due date June 14, 1996. With an extension of 20 days, the due date will be July 5, 1996, which is an awkward due date, because it is a Friday following July 4. Thus, we request an extension until July 8, 1996.

Also, in this regard, we are requesting copies of all the transcripts of the depositions taken in this matter.

Thank you for your consideration of these requests.

Sincerely,


Kenneth A. GROSS

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OFFICE OF GENERAL
COUNSEL

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 20, 1996

Kenneth A. Gross, Esq.
Skadden, Arps, Slate, Meagher & Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

RE: MUR 4091
Beth Cataldo

Dear Mr. Gross :

This is in response to your letter dated June 12, 1996, sent by facsimile transmission on the same date, requesting an extension of time until July 8, 1996 to respond to the General Counsel's probable cause brief. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response brief is due by the close of business on July 8, 1996.

We are considering your request for access to deposition transcripts relevant to this case. I will contact you this week to discuss this issue.

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

Sincerely,

Delanie DeWitt Painter
Attorney

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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MEMORANDUM

July 2, 1996

SENSITIVE

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman
Associate General Counsel

Rhonda J. Vosdingh
Assistant General Counsel

Delanie DeWitt Painter
Attorney

SUBJECT: MUR 4091 (Beth A. Cataldo) Request for Documents

On May 23, 1996, the Office of General Counsel forwarded the General Counsel's Brief ("the Brief") to counsel for respondent Beth A. Cataldo, the former Fundraising Director for the Tsongas for President Committee, Inc. ("the Committee"). The Brief recommends findings of probable cause to believe that Ms. Cataldo knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441f. These recommendations are supported by evidence uncovered in this Office's investigation, including the deposition of Ms. Cataldo, as well as evidence obtained about this matter during our investigation of MUR 3585 (Rizzo). Specifically, the Brief relies in part on testimony concerning Ms. Cataldo's actions given by three Committee officials, Dennis Kanin, David Goldman and Mary Wong, in depositions taken during our investigation of MUR 3585.

By facsimile transmission dated June 12, 1996, respondent's counsel requested "copies of all the transcripts of the depositions taken in this matter."¹ Attachment 1. Based on established Commission practice, this Office informed respondent's counsel that Ms. Cataldo could purchase a copy of her own deposition transcript from the court reporter.

¹ Respondent's counsel also requested an extension of time to respond to the Brief until July 8, 1996. This Office has granted the requested extension.

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The issue of the other depositions is more problematic. An agency is not required to produce investigatory materials to persons who are targets of its investigation. See *S.E.C. v. O'Brien*, 467 U.S. 735 (1984). However, the Commission is not precluded from providing investigatory materials to a respondent in an appropriate case. Generally, the Commission has provided such materials in instances where the respondent's credibility is challenged in depositions or where the respondent needs materials to evaluate the factual basis of a knowing and willful scheme.

This matter involves a knowing and willful scheme and Ms. Cataldo's credibility is at issue. The Brief relies in part on statements by deponents that contradict Ms. Cataldo's version of events. For example, Mr. Goldman testified that he advised Ms. Cataldo to stop her illegal actions, and that she did not do so. Ms. Cataldo denies that Mr. Goldman spoke to her. Thus, providing the deposition testimony to Ms. Cataldo would allow her to evaluate fully the Commission's evidence and to make a complete response.

However, the relevant depositions were taken in the course of our investigation in MUR 3585, an unrelated matter which also involves the Committee. The deposition transcripts are primarily related to MUR 3585 rather than MUR 4091 and most of the testimony is irrelevant to the instant case. Moreover, revealing this information to Ms. Cataldo would breach the confidentiality of the respondents in MUR 3585, an open enforcement matter.

Therefore, the Office of General Counsel recommends that the Commission permit Ms. Cataldo and her counsel to come to this Office to review copies of only the relevant portions of the deposition transcripts of David Goldman, Dennis Kanin and Mary Wong. The relevant portions will be separated from the rest of the deposition transcripts and any references to MUR 3585 or matters other than the subject of MUR 4091 will be expunged. This Office further recommends that Ms. Cataldo and her counsel be permitted to take notes on the contents of the depositions. This approach will afford respondent a reasonable opportunity to review the testimony while preserving the confidentiality of the Commission's investigatory records. Finally, this Office recommends that the Commission grant respondent an additional extension of time of ten days to respond to the Brief, to begin from the date that this Office makes the relevant deposition transcript portions available to respondent for review.

RECOMMENDATIONS

1. Grant respondent Beth A. Cataldo the opportunity to review relevant portions of the deposition transcripts of Dennis Kanin, David Goldman and Mary Wong taken in the investigation of MUR 3585;

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2. Grant respondent an additional extension of time of ten days to respond to the General Counsel's Brief, to begin on the date that this Office makes the materials available to respondent for review; and
3. Approve the appropriate letter.

Attachment

Facsimile transmission from Kenneth A. Gross, dated June 12, 1996

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Bath A. Cataldo.) MUR 4091

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on July 9, 1996, the Commission decided by a vote of 5-0 to take the following actions in MUR 4091:

1. Grant respondent Bath A. Cataldo the opportunity to review relevant portions of the deposition transcripts of Dennis Kanin, David Goldman and Mary Wong taken in the investigation of MUR 3585.
2. Grant respondent an additional extension of time of ten days to respond to the General Counsel's Brief, to begin on the date that this Office makes the materials available to respondent for review.

(continued)

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3. Approve the appropriate letter, as recommended in the General Counsel's Memorandum dated July 2, 1996.

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

Attest:

7-9-96
Date

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

Received in the Secretariat: Wed., July 3, 1996 9:48 a.m.
Circulated to the Commission: Wed., July 3, 1996 11:00 a.m.
Deadline for vote: Tues., July 9, 1996 4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 18, 1996

VIA FACSIMILE AND FIRST CLASS MAIL

Kenneth A. Gross, Esq.
Skadden, Arps, Slate, Meagher & Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

RE: MUR 4091
Beth Cataldo

Dear Mr. Gross :

This is in response to your letter dated June 12, 1996, requesting access to the deposition transcripts relevant to this matter. As I informed you by telephone on July 3, 1996, this Office has released the deposition transcript of your client, Beth A. Cataldo, and she is free to purchase a copy of that transcript from Heritage Reporting Corporation at (202) 628-4888.

On July 9, 1996, the Commission granted your client the opportunity to review the relevant portions of the deposition transcripts of Dennis Kanin, David Goldman, and Mary Wong. These materials will be made available for you and your client to review here at the Office of General Counsel. You may not take these materials or make copies of them, but you will be permitted to take notes on the contents of the depositions. Moreover, the Commission has granted your client an additional extension of time of ten days to respond to the General Counsel's Brief, to begin on the date that this Office makes the materials available to you. Since the materials are available immediately, your brief is due no later than the close of business on July 22, 1996.

Please contact me at (202) 219-3690 to make arrangements to review these materials.

Sincerely,

Delanie DeWitt Painter
Attorney

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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MEMORANDUM

July 16, 1996

TO: The Commission
FROM: Lawrence M. Noble *LMN*
General Counsel

SENSITIVE

Kim Bright-Coleman *KBC*
Associate General Counsel

Rhonda J. Vosdingh *RJV*
Assistant General Counsel

Delanie DeWitt Painter *DAP*
Attorney

SUBJECT: MUR 4091 (Beth A. Cataldo) Request for Documents

On May 23, 1996, the Office of General Counsel forwarded the General Counsel's Brief ("the Brief") to counsel for respondent Beth A. Cataldo. The Brief recommends findings of probable cause to believe that Ms. Cataldo knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441f. These recommendations are supported by evidence uncovered in this Office's investigation, including certain money orders obtained in our investigation from another respondent in this matter.

On July 9, 1996, the Commission approved this Office's recommendation to grant Ms. Cataldo the opportunity to review relevant portions of three deposition transcripts from MUR 3585. After this Office had circulated the memorandum with that recommendation, counsel for respondent made an additional request for documents in a telephone conversation with staff of this Office. Specifically, counsel for respondent requested copies of the money orders obtained through our investigation in MUR 4091.

The money orders are central to the violations in this case. Several were apparently signed by Ms. Cataldo, and the General Counsel's brief notes discrepancies concerning these documents as evidence supporting the knowing and willful nature of the violations in this case. Therefore, this Office will permit respondent and her counsel to review these documents at the same time and under the same conditions that the Commission approved for the review of the relevant deposition transcripts in its vote of July 9, 1996.

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SKADDEN, ARPS, SLATE, MEACHER & FLOM

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

(202) 371-7000

FAX (202) 393-8760

DIRECT MAIL
(202) 371-7007

BOSTON
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July 25, 1996

VIA FIRST CLASS MAIL

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

Attn: Delanie Painter, Esq.

Re: MUR 4091

Dear Mr. Noble:

This is in response to the letter dated May 23, 1996, indicating that the General Counsel intends to recommend to the Federal Election Commission ("FEC" or "Commission") that it should find probable cause to believe that the Federal Election Campaign Act of 1971, as amended ("FECA") was violated in connection with this matter. Specifically, the General Counsel alleges that Ms. Cataldo knowingly and willfully accepted contribution checks made in the name of another and which exceeded the \$1,000 individual contribution limit. These allegations are legally as well as factually unfounded.

Late in the afternoon on December 30, Ms. Cataldo picked up what turned out to be 38 blank money orders. At the time, the Campaign Manager, Dennis Kanin, was out of the office. The money orders were filled out by staff who were present in the campaign office and then were set aside to ascertain guidance from the Campaign Manager upon his return as to what to do with the money orders. The money orders were never deposited nor utilized by the Tsongas campaign, but instead were returned to the donor within hours of their original receipt at the office. As the staff fundraiser, Ms. Cataldo was involved with this entire process, from receipt of the money orders to their return later that same day.

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I. **The Money Orders in Question Were Not Accepted on Behalf of the Campaign and Were Never Deposited By the Campaign**

There is no violation in this case because Ms. Cataldo did not accept the money orders in question on behalf of the Tsongas Campaign ("Campaign"). FEC rules explicitly permit such conditional acceptance without resulting in any violation. A political committee may deposit contributions presenting genuine questions as to their legality without resulting in a violation if the political committee returns those contributions within ten days of receipt. 11 C.F.R. § 103.3(b)(1). Political committees are given this ten day period to review and investigate the legality of a contribution. See AO 1985-25, at 2 (September 23, 1985).¹ Indeed, the FEC's General Counsel's Brief states that a contribution is accepted under FECA if "an agent authorized to accept payments on behalf of a principal receives payments for a principal." General Counsel's Brief, at 10 (emphasis added). In this case, however, Ms. Cataldo did not accept the money orders on behalf of the Campaign, but was rather holding those checks to determine whether the Committee could lawfully accept them.

This is precisely what occurred in this case. Indeed, the money orders were not even deposited by the Committee. Within hours of coming into possession of the money orders, Ms. Cataldo had a meeting with Dennis Xanin, the Campaign Manager, regarding the legality of

¹ The Commission has already defined what constitutes "acceptance" of a contribution under FECA. In MUR 2774, a committee, presumably through a staffer, was given a \$1000 check drawn on a corporate account. The campaign did not deposit the check, but instead returned it to the donor within 10 days. The Commission found that in not depositing the funds and in returning them to the donor, the check "in question was not accepted by the Committee." See MUR 2774 at p. 4.

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whether the Committee could accept them and they decided to immediately return the checks. See Attached Affidavit of Dennis Kanin. The campaign, with Ms. Cataldo's involvement, strictly stayed within the strictures of the Commission's rules on conditional acceptance of contributions. 11 C.F.R. § 103.3(b)(1). Moreover, under FEC regulations, contributions that are returned undeposited within 10 days of receipt do not even trigger a reporting obligation by the Campaign. See 11 C.F.R. § 103.3(a); FEC Campaign Guide, at 31 fn. 10 (1995). It is hard to imagine that the Commission would find an "acceptance" for purposes of liability when the activity surrounding the money orders does not even rise to the level of triggering a reporting obligation. Given that the primary focus of FECA is to require the disclosure of virtually every conceivable transaction regarding a campaign, this activity -- which did not trigger a reporting obligation -- clearly does not trigger liability.

The General Counsel's Brief appears to equate mere possession by an agent of a campaign with acceptance on behalf of the campaign. The brief cites several insurance cases that stand for the proposition that payment is made by an insured person when the payment comes "into the agent's hands." Those cases, however, are inapposite in that they only deal with the issue of when the payor makes a payment and not the issue of when the payee, e.g., the insurance company, accepts the payment. Similarly, the standard used to determine when a contribution is made, i.e., when the contributor relinquishes control, is different from determining when the campaign accepts that contribution. The standard for the latter cannot be mere possession by an agent because that would lead to the implausible result that a political committee is deemed to accept any check that an agent accidentally handles. Moreover, this standard would flout the conditional acceptance standard established by section 103.3 of the FEC regulations as described above. Because there was no acceptance of the money order funds by the Committee, section 441a(f) could not have been violated.

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II. **Ms. Cataldo in Her Capacity as Director of Fundraising Is Not Liable for Violations by the Campaign**

Even if the money orders in this case were considered to have been accepted by the Campaign, the treasurer of the Campaign is liable for assuring the legality of the contributions accepted by the Campaign. The treasurer is responsible for "examining all contributions received for evidence of illegality." 11 C.F.R. § 103.3(b). Additionally, it is the treasurer who "shall be personally responsible for" the Committee's compliance with the Act. 11 C.F.R. § 104.14(d). Resultantly, there is no Commission precedent holding a staff employee personally liable under the FECA. This assignment of liability under FECA to the Committee and its designated treasurer -- and not to staff employees -- holds true under Commission precedent even in instances where hundreds of violations of the Act involving thousands of dollars occurred, such as in compliance actions involving major presidential campaigns including Dole, Mondale, Kemp and Reagan. The treasurer must also keep an account of all contributions received by the Campaign. 2 U.S.C. § 432. The statutory scheme was carefully crafted so that liability would rest with the treasurer. See 11 C.F.R. § 103.3. Other agents of a campaign are responsible for making sure that the treasurer receives the contributions within the ten days of their receipt. 11 C.F.R. 102.6(a). The only way that an agent of the Campaign other than the treasurer may be liable under FECA is if that officer fails to forward the contribution to the treasurer or return it within ten days. Of course, in this case, the agent immediately returned the funds in consultation with the Campaign Manager.

III. **A Claim of Knowing and Willful Is Groundless**

Incredulously, the General Counsel intends to recommend a knowing and willful violation. The recommendation of such elevated finding is based upon an unsubstantiated allegation by David Goldman who allegedly twice informed Ms. Cataldo that filling out the money orders was a "bad idea." As a legal matter, there is no

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significance to this alleged conversation and factually, there is grave doubt it ever took place. Ms. Cataldo flatly denies that Mr. Goldman ever told her anything about the money orders. Also, as Mr. Goldman acknowledges, he was a peer of Ms. Cataldo and not a supervisor in a position to order her to do anything. According to Mr. Goldman's testimony, there is a history of acrimony between Mr. Goldman and Ms. Cataldo, which sheds doubt on the credibility of Mr. Goldman's testimony. Even he admits that in his opinion he never told Ms. Cataldo that it was illegal to get the money orders signed. Mr. Goldman, admits that he didn't actually see what happened. Mary Wong does not even remember telling Mr. Goldman that Ms. Cataldo's activities were illegal or Mr. Goldman talking to Ms. Cataldo regarding those money orders. Moreover, the enclosed affidavit of Andrew Paven and Lorraine Alexander contradict Mr. Goldman's allegation.

In total, Mr. Goldman's testimony lacks credibility, but even if it were entirely reliable, it does not add anything to the claim that Ms. Cataldo knowingly and willfully violated the law. No one even alleges that Ms. Cataldo was told that the activity was illegal.

Ms. Cataldo was never trained on FEC requirements beyond the basics of the law. Moreover, even someone trained in the law would not necessarily know what to do with unsigned money orders, nor was it her responsibility to know what to do with them. It was her responsibility to check with her superior before depositing the money orders or hand them over to the Treasurer, who was unavailable and generally not on site. Ms. Cataldo learned for the first time when reviewing the transcripts of the deposition testimony that, according to Mary Wong, Lorraine Alexander gave the money orders to Mary Wong for deposit. It was not Ms. Cataldo's intention to deposit the money orders nor did she direct Ms. Alexander to do so. As Ms. Cataldo testified, her intention was the opposite, to hold the money orders until Dennis Kanin could review the issue.

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Ms. Cataldo did exactly what she was supposed to do, hold the money orders until her supervisor returned. When her supervisor returned, they discussed the matter and the money orders were returned. The fact that campaign staffers filled out the money orders so that they could be put in a form to be deposited if her supervisor wished to take that approach, is simply not actionable as a violation, much less a willful violation.

The worst characterization of what occurred on December 30, 1991, is that Ms. Cataldo attempted to violate the law. However, FECA does not make an attempted violation, a violation. No harm was done, the Committee did not use these funds, no violation occurred, and the procedures worked in a way that the Commission could only hope they would work every time. If they did, there would be perfect compliance with the law. The perverse attempt by the General Counsel to somehow turn what occurred into a violation of law turns the law on its head and undermines the statutory and regulatory scheme which is designed to ferret out possible violations and achieve compliance with the law.

Therefore, given that no contributions were accepted on behalf of the Campaign by Ms. Cataldo and she stayed within the strictures of section 103.3 of the FEC rules, the FEC is compelled to find that no probable cause to believe a violation occurred. Moreover, there is no conceivable legal or factual basis upon which a knowing and willful violation could be found. Especially given that this is the first case in which the Commission has ever attempted to assess personal liability on an agent of a campaign other than the treasurer.

Respectfully submitted,



Kenneth A. Gross

Enclosures

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BEFORE THE FEDERAL ELECTION COMMISSION

RE: MUR 4091

I, Dennis R. Kanin, on oath depose and state:

I was the Campaign Manager of the Tsongas Committee from April 1991 until the conclusion of the candidacy in or about March of 1992;

In the Fall of 1991, I became aware that Jim Lichoulas had agreed to raise \$10,000 for the Committee;

I was not at the Tsongas Committee office on Monday, December 30, 1991 until after 6:00 P.M. in the afternoon;

After I returned, it was brought to my attention that Ms. Cataldo had received money orders from Mr. Lichoulas. I was informed that there was an issue concerning the money orders and I took steps to rectify the situation;

Specifically, in the evening on December 30, 1991, I called Michael Kail, Esq., a Washington, D.C. lawyer associated with the Tsongas Committee, for advice with respect to the money orders. As a result of my conversation with Mr. Kail, I had the money orders returned uncashed to Mr. Lichoulas as soon as possible;

In conversation with Ms. Cataldo on the evening of December 30, 1991, she informed me that she had been surprised to find that Mr. Lichoulas had provided blank money orders to the Committee and not personal checks;

From what Ms. Cataldo said to me and from her demeanor, it appeared to me that she was genuinely surprised that Mr. Lichoulas gave her blank money orders instead of personal checks from donors; and

On December 31, 1991, I spoke to Mr. Lichoulas on the phone and he said that the money orders in question were intended to represent funds from separate individuals with accounts at the Mercantile Bank;

Signed under the pains and penalties of perjury, this 30th day of March, 1995.

Dennis R. Kanin
Dennis R. Kanin

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BEFORE THE FEDERAL ELECTION COMMISSION

RE: MUR 4091

I, Andrew Paven, on oath depose and state:

I was employed as the national trip director as a full-time staff person by the Tsongas Committee from June, 1991 until the conclusion of the candidacy in or about April of 1992;

In or about October of 1991 I became aware that Mr. Jim Lichoulas had agreed to raise \$10,000 on behalf of the Committee through an event to be held at his home in Reading, MA;

The Lichoulas fundraising event was placed on Paul Tsongas' schedule several times that fall, but was repeatedly re-scheduled for various reasons;

I was at work at the Tsongas Committee office on Monday, December 30, 1991 when Mr. Lichoulas called in the afternoon and Ms. Cataldo left the Committee office to go pick up the contributions;

My desk was very close to that of Ms. Cataldo, and when she returned from the Mercantile Bank that afternoon, I never observed anyone associated with the Committee objecting to the signing of money orders, nor did I observe any staff of the Committee instructing anyone not to sign the money orders;

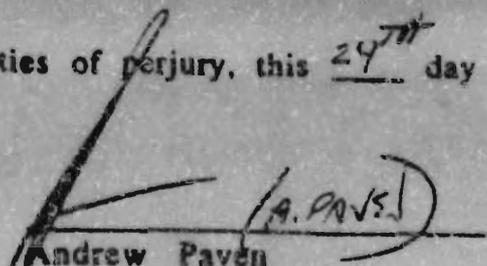
During this entire brief incident, I never observed or heard anyone asking staffers to date the money orders any date other than December 30, 1991 and to the best of my knowledge, all of the money orders were dated December 30, 1991;

At the time the money orders were signed, the staff of the Committee was unaware that the signing of the money orders constituted a possible violation of any law, nor was there any intent whatsoever on the part of anyone signing the money orders to violate any law;

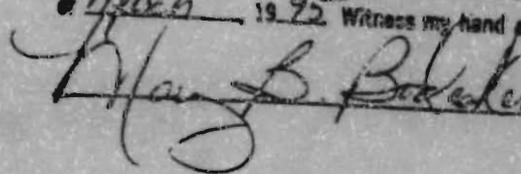
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At the time the money orders were signed, it was my understanding that the Campaign Manager, Dennis Lenta, was going to have to sign off on this activity before a deposit of these money orders would be made.

Signed under the pains and penalties of perjury, this 24th day of March, 1995.


Andrew Paven
530 Tobacco Quay
Alexandria, VA 22314

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City/County of Alexandria Commonwealth/State of Virginia
Sworn to and subscribed before me this 24th day
of March 19 95 Witness my hand and official seal.

Notary Public

My Commission Expires 1/31/98

BEFORE THE FEDERAL ELECTION COMMISSION

RE: MURKIN

I, Lorraine Alexander, on oath depose and state:

1. I was employed by the Tsongas Committee ("the Committee") from September 1991 until May of 1992 and served as the Committee's co-national finance director;

2. In or about October of 1991 I became aware that Mr. Jim Lichouias had agreed to raise \$10,000 on behalf of the Committee through an event to be held at his home in Reading, MA;

3. In mid-December 1991 Beth Cataldo, Paul Tsongas and I went to a reception for prominent members of the Greek community at the Mercantile Bank in Boston, MA, where Mr. Lichouias was on the Board of Directors;

4. During this reception, attendees informed us that they had agreed to contribute \$250.00 to the Tsongas candidacy through the Lichouias house party;

5. On Saturday, December 28, 1991 I was working at the Tsongas Committee office and at the end of that day, pursuant to a call from Mr. Lichouias, Ms. Cataldo traveled to Mr. Lichouias' home in Reading, MA to pick up the \$10,000 in contributions Mr. Lichouias claimed he had raised;

6. I did not see Ms. Cataldo at the Committee office on Sunday, December 29 because she was travelling to Pittsburgh, PA and Cleveland, OH for fundraising events on behalf of the Committee;

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7. I was at work at the Tsungas Committee office on Monday, December 30, 1991 when late in the afternoon Mr. Lichoulas called the Committee and Ms. Cataldo left the office to pick up the contributions Mr. Lichoulas claimed he had raised and were waiting to be picked up at the Mercantile Bank;

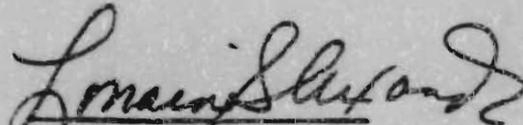
8. My desk was next to that of Ms. Cataldo, and when she returned from the Bank that afternoon, I never observed anyone associated with the Committee objecting to the signing of the money orders, nor did I observe any staff of the Committee instructing anyone not to sign the money orders;

9. No staffers were asked by anyone to date the money orders any date other than December 30, 1991 and to the best of my knowledge, all of the money orders were dated December 30, 1991;

10. At the time the money orders were signed, this was done in extreme haste, and it was our understanding that the money orders were being signed provisionally and subject to the approval of the Campaign Manager, Dennis Kanin; given that all campaign decisions were made directly by Dennis Kanin, whether or not the money orders would be deposited by the Committee was a decision that would be made by Mr. Kanin;

11. At the time the money orders were signed, neither myself nor any other staff of the Committee was aware that the signing of the money orders was a potential violation of any law, nor was there any intent whatsoever on the part of anyone signing the money orders to violate any law.

Signed under the pains and penalties of perjury, this 21 day of March 1995.


LORRAINE ALEXANDER

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BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)

Beth A. Cataldo)

MUR 4091)

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On October 19, 1994, the Commission found reason to believe that Beth A. Cataldo knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441f.¹ On the same date, the Commission directed this Office to enter into conciliation with Ms. Cataldo prior to a finding of probable cause to believe and approved a proposed conciliation agreement

Moreover, the Commission approved subpoenas for documents and depositions. On July 21, 1995, this Office deposed Ms. Cataldo.

On October 25, 1994, the Commission sent the proposed conciliation agreement to Ms. Cataldo.

On May 23, 1996, this Office mailed Ms. Cataldo a letter and brief notifying her that this Office was prepared to recommend that the Commission find probable cause to believe that she knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441f.

¹ Throughout this report, "FECA" and "the Act" refer to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-55.

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By letter dated June 12, 1996, Ms. Cataldo requested an extension of time to respond and access to discovery materials related to the case. This Office granted the extension of time to respond and permitted Ms. Cataldo to purchase a copy of her own deposition transcript. On July 23, 1996, Ms. Cataldo reviewed in the Office of General Counsel copies of the money orders at issue and relevant portions of certain deposition transcripts taken in the course of the investigation of MUR 3585. Ms. Cataldo filed a responsive brief dated July 25, 1996, arguing that the Commission should find no probable cause to believe that she knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441f. Attachment 1.

After reviewing respondent's brief, this Office recommends that the Commission find probable cause to believe that Ms. Cataldo knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441f. Moreover, this Office recommends that the Commission approve the attached conciliation agreement.

II. SUMMARY OF CATALDO'S RESPONSE

In her brief, Ms. Cataldo makes several legal and factual arguments that are generally similar to her contentions in prior responses.² While Ms. Cataldo admits that she was "involved" in receiving the money orders, she contends that no violation occurred because the money orders were never deposited or utilized by the Committee and were returned to the donor immediately. Ms. Cataldo argues that she did not accept the money orders on behalf of the Committee but rather "was holding the checks to determine whether the Committee could lawfully accept them." Attachment 1 at 2. She claims that she did not intend to deposit the money orders but intended to hold them until she could discuss the transaction with her

² Attached to the response brief were several affidavits from campaign staff that Ms. Cataldo had already submitted to the Commission in response to the reason to believe finding.

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supervisor, Dennis Kanin. She claims that she met with Mr. Kanin and that they decided to return the checks immediately. Ms. Cataldo asserts that since the Committee did not accept or deposit the money orders but instead returned them to the contributor as permitted by the regulations (citing, *inter alia*, 11 C.F.R. §§ 103.3(a) and (b)(1); AO 1985-25; MUR 2774), a violation did not occur. She contends that contributions that are returned before they are deposited do not violate the law or even trigger a reporting obligation under 11 C.F.R. § 103.3(a). Ms. Cataldo argues that "mere possession" of the excessive contribution did not constitute acceptance by the campaign or give rise to a violation of 2 U.S.C. § 441a(f).

Moreover, Ms. Cataldo contends that the Committee treasurer, not Ms. Cataldo, is liable for any election law violations arising from the transaction. She argues that "there is no Commission precedent holding a staff employee personally liable under the FECA" and that the "only way that an agent of the Campaign other than the treasurer may be liable under FECA is if that officer fails to forward the contribution to the treasurer or return it within ten days." Attachment 1 at 4.

In addition, Ms. Cataldo contests this Office's conclusion that her violations were knowing and willful. She contends that this Office relies primarily upon the unsubstantiated testimony of David Goldman that he told Ms. Cataldo that filling out the blank money orders was a "bad idea." *Id.* at 4-5. Ms. Cataldo denies that Mr. Goldman spoke to her about the money orders. She notes that Mr. Goldman was her peer, not her supervisor and that he did not testify that he told her the transaction was illegal. Ms. Cataldo contends that Mr. Goldman's testimony is not credible because there is a history of acrimony between them, and other individuals do not support his testimony. Further, she asserts that even if his

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testimony is true, it does not support a knowing and willful finding because he did not tell her that the transaction was illegal.

In addition, Ms. Cataldo contends that she was never trained in the FECA and Commission regulations and that she did not know what to do with unsigned money orders. Moreover, she argues that the fact that campaign staffers filled out the money orders does not make the transaction a knowing and willful violation. Finally, Ms. Cataldo argues that, at worst, she attempted to violate the law, and that such an attempt is not a violation under the FECA.

III. ANALYSIS

Contrary to Ms. Cataldo's contentions, there is probable cause to believe that she knowingly and willfully violated 2 U.S.C. §§ 441f and 441a(f).³ Ms. Cataldo knowingly and willfully accepted excessive contributions to the Tsongas Committee, Inc. (the "Committee") from James Licheulas in the form of blank money orders. Moreover, she knowingly and willfully permitted her name to be used to effect contributions in the name of another, helped and assisted, and indeed, directed others in making contributions in the name of another, and accepted contributions in the name of another. See 2 U.S.C. §§ 441a(f) and 441f; 11 C.F.R. § 110.4(b). Ms. Cataldo's legal arguments are not persuasive and she has provided no additional factual evidence to support her contentions. Throughout her response, Ms. Cataldo confuses the issue of the Committee's culpability with her own. The issue of whether the Committee violated the law and the steps the Committee took to rectify the situation are simply irrelevant to Ms. Cataldo's violations.

³ We incorporate by reference the General Counsel's Brief dated May 23, 1996 which sets out the facts in this matter and this Office's legal analysis.

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Ms. Cataldo's assertion that she did not accept the contributions on behalf of the Committee, and thus, did not violate the Act is legally flawed and factually unsubstantiated. The Act specifically prohibits officers or employees of a political committee, such as Ms. Cataldo, from knowingly accepting an excessive contribution. 2 U.S.C. § 441a(f). Ms. Cataldo violated 2 U.S.C. § 441a(f) when she accepted the excessive contribution from Mr. Lichoulas by picking up the blank money orders at the Mercantile Bank. As Fundraising Director for the Committee, Ms. Cataldo was the Committee's agent and had the authority to accept contributions. See 2 U.S.C. §§ 432(a) and (b); 11 C.F.R. §§ 102.8(a), 102.9, 110.1(b)(6); AO 1992-29. She accepted the contributions on behalf of the Committee on the date that she obtained possession of the contributions.⁴ See 11 C.F.R. § 102.8(b)(2) (date of receipt of contribution is "the date such person obtains possession of the contribution," not the date the individual forwards the contribution to the committee treasurer); AO 1992-29 (receipt of contributions by clerical employee assigned to open envelopes constitutes receipt by committee); AO 1980-42.

Moreover, Ms. Cataldo's acceptance of the contributions is evident from her treatment of them. Indeed, the evidence contradicts Ms. Cataldo's contentions that she merely intended to hold the contributions until she could consult with Mr. Kanin, rather than deposit them. Ms. Cataldo not only picked up the envelope of contributions but also orchestrated the deliberate alteration of the money orders to make them negotiable. She signed several of the money orders herself and instructed other staff to sign them, although

⁴ A contribution shall be considered to be made on the date that the contributor relinquishes control over the contribution and delivers it to the candidate, committee, or agent of the political committee. 11 C.F.R. § 116.1(b)(6); see *U.S. v. Hankin*, 607 F.2d 611, 615 (3rd Cir. 1979) (decided prior to the promulgation of 11 C.F.R. § 110.1(b)(6) and holding that the "criminal act of making the illegal contribution is complete before the deposit of the checks").

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she knew that none of them had actually made the contributions. Neither did Ms. Cataldo hold all of the contributions, as she claims; instead, a campaign staffer brought some of them to Mary Wong for processing and deposit.

Ms. Cataldo's deliberate manipulation of the money orders indicates her intent to deposit them as contributions from individuals who had not contributed the funds, not to return them to the true contributor. Thus, Ms. Cataldo violated 2 U.S.C. § 441f by permitting her name to be used to effect a contribution in the name of another, directing campaign staff in making contributions in the name of another, and accepting contributions in the name of another by collecting the signed money orders from the staff. See 11 C.F.R. §§ 110.4(b) and 110.6(b)(1); AO 1992-29; *U.S. v. Hankin*, 607 F.2d at 614 ("act of making a contribution does not require a deposit of the checks").

Contrary to Ms. Cataldo's assertion, her violations are not vitiated by the fact that the Committee did not deposit the signed money orders but instead returned them to Mr. Lichoulas. The transaction, and the concomitant violations, were complete when Ms. Cataldo received and accepted the contributions on behalf of the Committee. She accepted the contributions regardless of whether the Committee ultimately deposited them. See 11 C.F.R. § 102.8; *Liberty Mutual Insurance Co. v. Enjay Chemical Co.*, 316 A.2d 219, 222 (Del. Super. Ct. 1974) (funds paid to agent of insurance company considered received by insurance company, although agent fraudulently converted the funds for personal use); *Maryland Casualty Co. v. U.S.*, 251 U.S. 342, 347 (1920) ("receipt by an agent is regarded as receipt by his principal"); 3 Am. Jur. 2d Agency § 279 at 780 (payment made to an agent having the authority to receive or collect payment is equivalent to payment to principal and is

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complete when money is delivered into the agent's hands, regardless of agent's misappropriation of money).

Ms. Cataldo seeks to exculpate her own knowing and wilful violations by relying upon the Committee's prompt return of the money orders to Mr. Lichoulas.⁵ The Commission has not pursued the Committee for any violations arising from this transaction because the Committee acted swiftly to return the illegal contribution to the contributor to cure the violation, as permitted by the regulations. See 11 C.F.R. § 103.3. In addition, the Committee immediately dismissed Ms. Cataldo for her actions.

While the Committee ultimately returned the money orders to the contributor, Ms. Cataldo herself did not return the contributions to Mr. Lichoulas or attempt to obtain the correct signatures for the money orders. Ms. Cataldo cannot credibly assert that she merely held or "conditionally accepted" the contributions and was making best efforts to determine their legality. See AO 1985-25. She made little or no effort to ascertain the source of the blank money orders and made no attempt to contact the Committee treasurer, or to enlist the assistance of other staff in attempting to discover the source of the contributions. Indeed, any question of the legality of the money orders became moot when Ms. Cataldo deliberately altered them to disguise their true contributor. Even if the blank money orders had been legal contributions from a number of individuals, this alteration made the contributions illegal. Further, despite her contention that she and Mr. Kanin jointly decided to return the money

⁵ Ms. Cataldo misinterprets the Commission's regulations by citing 11 C.F.R. § 103.3(b)(i). This provision applies to situations where there is a genuine question of whether a contribution is from a corporation, labor organization, foreign national or federal contractor. The contributions at issue here were from none of those prohibited sources, but rather, were illegal because they were excessive and made in the name of another. Similarly, MUR 2774, cited by Ms. Cataldo, involved a corporate contribution.

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orders to Mr. Lichoulas, it appears that Mr. Kanin made this decision based on legal advice and that he dismissed Ms. Cataldo from her position with the campaign because of her actions. See Deposition of Dennis Kanin, March 3, 1994 at 100-104.

Moreover, it is not true that a political committee's treasurer is solely liable for FECA violations by campaign staff. Ms. Cataldo's contention that she should not be held liable for her violations because she was a staff person, not the Committee treasurer, is not persuasive. While the treasurer of a political committee is responsible, *inter alia*, for timely and accurate reporting 11 C.F.R. § 104.14(d), and the review and processing of contributions 11 C.F.R. § 103.3, the treasurer is not the only individual connected with a campaign who may commit a FECA violation or be subject to enforcement action. The Act prohibits actions by both individuals and political committees. The committee treasurer is generally held liable for committee violations; but individuals are responsible for their own violations. Thus, the Committee's actions to return the contributions have no bearing on Ms. Cataldo's culpability.⁶ The provisions of the FECA that Ms. Cataldo violated apply to her regardless of whether the Committee also violated them. Contrary to Ms. Cataldo's assertion, failure to forward contributions is not the only violation for which a committee staff person other than the treasurer may be held liable. Any "person," including a staff person, can violate 2 U.S.C. § 441f, and any "officer or employee of a political committee" may violate 2 U.S.C. § 441a(f). Thus, Ms. Cataldo may be held liable for her violation of these provisions.

⁶ Contrary to Ms. Cataldo's assertion, it is irrelevant whether the contributions triggered a Committee reporting obligation.

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Moreover, Ms. Cataldo's assertion that there is no Commission precedent for pursuing staff other than the treasurer is simply incorrect.⁷ The Commission pursues committee staff members other than the treasurer for violations where those staff members committed the violations, particularly in cases such as this one where the individual has knowingly and willfully violated the Act. *See, e.g.*, MUR 2602 (Commission found reason to believe that committee finance chairman knowingly and willfully violated 2 U.S.C. §§ 441f, 441a(a)(1)(A), and 441a(f), and violated 432(b)(3) and 441b(a)); MUR 3585 (Commission found reason to believe against chief fundraiser of the Tsongas Committee, Inc. for numerous knowing and willful violations). In addition, Ms. Cataldo fails to explain why she made no attempt to contact the treasurer, whom she now asserts was liable for any violations, for instructions on how to process the money orders before she directed other staff to fill out the blank money orders with false information. Ms. Cataldo cannot use the Committee treasurer to shield herself from prosecution for her deliberate, knowing and willful actions.

There is ample evidence to support the conclusion that Ms. Cataldo's violations were knowing and willful. Upon discovering that the money orders were blank, Ms. Cataldo did not return them to the bank or wait to process them until she could clarify their source. Instead, knowing that the money orders could not be deposited without signatures, Ms. Cataldo immediately signed some of the money orders herself and requested that other campaign staff sign the rest. She knew that none of the staff who signed the money orders

⁷ Ms. Cataldo seeks to support this assertion by referring to the treasurer's liability in enforcement matters involving large amounts and numerous violations by presidential campaigns. However, these cases are distinguishable because they involved violations by the committees, not illegal actions by individual staff members. *See, e.g.*, MUR 3360 (Kemp).

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had paid for them. Ms. Cataldo was fully aware that the names and dates that she and the other staff members wrote on the money orders were not the correct identification of the contributor or contributors of the funds. Ms. Cataldo's awareness that she was assisting and facilitating the making of contributions in the names of individuals who did not contribute the funds supports a knowing and willful finding.

Moreover, Ms. Cataldo's explanation of why she was compelled to direct staff to fill out the money orders immediately is illogical and inconsistent with her claim that she planned to ask Mr. Kanin about the transaction. Staff could have signed the money orders the next morning, if Mr. Kanin had approved the action, and the deposit could still have been included in the same reporting period. Even if there had been a genuine question of the money orders' legality, as Ms. Cataldo contends, it is difficult to comprehend how anyone would believe that it would be legal to resolve the ambiguity by deliberately filling out false information on the money orders. Indeed, Ms. Cataldo's actions are consistent with the actions of an individual who knows that she is doing something illegal.

Further evidence of Ms. Cataldo's knowing and willful intent appears on the signed money orders themselves, which are dated different dates even though the transaction occurred on one day. Although she claims not to recall signing any of the money orders, Ms. Cataldo's own signature appears on the money orders. The money orders signed by Ms. Cataldo have two different dates, which suggests the intent to obscure the timing of the transactions. Ms. Cataldo does not even address this evidence in her response, much less refute it. The signed and misdated money orders support the conclusion that Ms. Cataldo sought to conceal the true origin of these contributions, and that her violation was knowing

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and willful. *See Spies v. U.S.*, 317 U.S. at 499 (willfulness indicated where conduct is "to mislead or to conceal"); 2 U.S.C. § 441f and 11 C.F.R. § 110.1(b)(6).

In addition, David Goldman's testimony contradicts Ms. Cataldo's claim that she does not recall other staff members objecting to the transaction. Mr. Goldman clearly recalls twice telling Ms. Cataldo that the transaction was a "really bad idea" and that she should not proceed, and that she blatantly refused to heed his admonitions. Ms. Wong's testimony supports Mr. Goldman's version of events. Statements provided by Ms. Cataldo from other staff do not undermine Mr. Goldman's account, since those staff may not have been present when Mr. Goldman spoke with Ms. Cataldo. Moreover, the credibility of one of these individuals, Lorraine Alexander, may be questionable because she was personally involved in the transaction: she signed one of the money orders and brought some of the money orders to Ms. Wong for deposit. The fact that there had been friction between Ms. Cataldo and Mr. Goldman does not undermine his credibility any more than it casts doubt upon hers, and it is implausible that Mr. Goldman would concoct a story out of residual ill will so long after the event. In addition, it is irrelevant that Mr. Goldman was not Ms. Cataldo's supervisor and that he did not say the transaction was illegal, because the fact that he warned her that the transaction was a "really bad idea" should have raised questions in her mind about its legality. The fact that his admonition did not even make her hesitate is evidence that she knew the transaction was improper and that she was knowingly and willfully violating the law.

Similarly, there is evidence that Ms. Cataldo's violation of 2 U.S.C. § 441a(f) was knowing and willful. Ms. Cataldo was aware of the \$1,000 contribution limitation for individuals. She also knew that Mr. Lichoullas had already contributed the maximum

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amount. Nevertheless, Ms. Cataldo failed to take any precautions to ensure that the money orders were permissible contributions and recklessly intended that the money orders be deposited before clarifying their source. Indeed, despite the apparent peculiarity of 38 blank money orders, Ms. Cataldo failed to question Mr. Lichoulas about the origin or the source of the funds. Her claim that she never considered the possibility that the funds for the money orders came from Mr. Lichoulas strains credulity. Her actions reflect more than a lack of judgment. They reflect a knowing and willful intent. *See United States v. DeGarces*, 518 F.2d 1156, 1160 (2d Cir. 1975) (requisite guilty knowledge may be inferred when "despite the extremely unusual circumstances surrounding the transaction, appellee failed to make any serious inquiry").

Moreover, despite her position as Fundraising Director, Ms. Cataldo claims not to have had knowledge of the Act or the Commission's regulations. However, she testified that she was careful not to sign all the money orders because she knew that there was a \$1,000 contribution limitation. This testimony is inconsistent with her assertion that she believed the contributions could all be reattributed, and suggests her willful intent. Although the transaction was highly unusual, Ms. Cataldo made no attempt to check the legality of her actions in any written materials such as the Act and Commission regulations, Commission publications, or manuals. Nor did Ms. Cataldo ask for advice from Ms. Wong, whom Ms. Cataldo considered to be an expert in election law and who was present in the Committee offices at the time. Indeed, it is remarkable that Ms. Cataldo neither asked Ms. Wong's opinion nor asked her to sign any of the blank money orders. Ms. Cataldo also did not seek advice from the Committee treasurer, or other Committee staff. Moreover, it is

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surprising, given Ms. Cataldo's legal background, that she would not question whether individuals could legally sign money orders that they had not purchased.

Finally, Ms. Cataldo contends that at most she merely attempted to violate the law and that attempt does not give rise to a violation. To the contrary, the illegal transactions were not merely attempted, but were completed. Ms. Cataldo accepted the excessive \$9,500 contribution from Mr. Lichoulas on behalf of the Committee when she picked up the envelope of money orders from the bank. The transactions involving contributions in the name of another were completed when the staff members and Ms. Cataldo herself filled out false information on the blank money orders and Ms. Cataldo accepted the completed money orders from the staff members.

Therefore, this Office recommends the Commission find probable cause to believe that Ms. Cataldo knowingly and willfully violated the Act by assisting others in making contributions in the name of another, allowing her name to be used to effect contributions in the name of another, and accepting contributions made in the name of another. 2 U.S.C. § 441f. In addition, this Office recommends that the Commission find probable cause to believe that Ms. Cataldo knowingly and willfully accepted excessive contributions from Mr. Lichoulas when she received the blank money orders totaling \$9,500. 2 U.S.C. § 441a(f).

IV. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

This Office recommends that the Commission approve the attached conciliation agreement

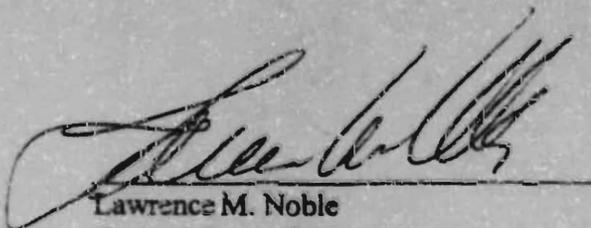
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V. RECOMMENDATIONS

1. Find probable cause to believe that Beth A. Cataldo knowingly and willfully violated 2 U.S.C. § 441a(f);
2. Find probable cause to believe that Beth A. Cataldo knowingly and willfully violated 2 U.S.C. § 441(f);
3. Approve the attached conciliation agreement; and
4. Approve the appropriate letter.

Date

7/27/96



Lawrence M. Noble
General Counsel

Attachments

1. Beth Cataldo's brief, dated July 25, 1996
2. Conciliation agreement

Staff assigned: Delanie DeWitt Painter

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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: OCTOBER 7, 1996

SUBJECT: MUR 4091 - General Counsel's Report dated September 27, 1996.

The above-captioned document was circulated to the Commission
on Tuesday, October 01, 1996.

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

- Commissioner Aikens
- Commissioner Elliott
- Commissioner McDonald
- Commissioner McGarry
- Commissioner Thomas

This matter will be placed on the meeting agenda for
Tuesday, October 22, 1996.

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)
Beth A. Cataldo) MUR 4091

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on October 22, 1996, do hereby certify that the Commission decided by a vote of 4-0 to take the following actions in MUR 4091:

1. Find probable cause to believe that Beth A. Cataldo knowingly and willfully violated 2 U.S.C. § 441a(f).
2. Find probable cause to believe that Beth A. Cataldo knowingly and willfully violated 2 U.S.C. § 441(f).
3. Approve the conciliation agreement recommended in the General Counsel's September 27, 1996
4. Approve the appropriate letter as recommended in the General Counsel's September 27, 1996 report.

Commissioners Aikens, Elliott, McDonald, and Thomas voted affirmatively for the decision. Commissioner McGarry was not present at the time of the vote.

Attest:

10-23-96
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary to the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 25, 1996

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Kenneth A. Gross, Esq.
Skadden, Arps, Slate, Meagher & Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

RE: MUR 4091
Beth Cataldo

Dear Mr. Gross :

On October 22, 1996, the Federal Election Commission found probable cause to believe that your client, Beth A. Cataldo, knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441(f), provisions of the Federal Election Campaign Act of 1971, as amended, by accepting excessive contributions in the amount of \$9,500 to the Tsongas Committee, Inc. and by permitting her name to be used to effect a contribution in the name of another, assisting and directing campaign staff members to use their names to effect a contribution in the name of another and accepting contributions in the name of another.

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

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

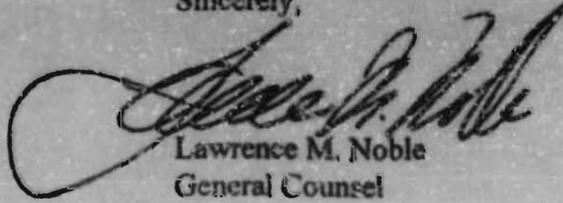
If you have any questions or suggestions for changes in the enclosed conciliation agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation

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Kenneth A. Gross, Esq.
MUR 409!
Page 2

agreement, please contact Delanie DeWitt Painter, the attorney assigned to this matter, at
(202) 219-3690.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

MAR 4 3 10 PM '97

In the Matter of

)
) 28 U.S.C. § 2462
) Statute of Limitations
)
)
)

SENSITIVE

MAR 11 1997

GENERAL COUNSEL'S REPORT

EXECUTIVE SESSION

I. INTRODUCTION

On December 26, 1996, the United States Court of Appeals for the Ninth Circuit issued a decision in *Federal Election Commission v. Williams*, No. 95-55320 (9th Cir. Filed Dec. 26, 1996). That decision held, *inter alia*, that the five-year statute of limitations for filing suit to enforce a civil penalty established at 28 U.S.C. § 2462 applies not only to judicial proceedings to enforce civil penalties already imposed, but also to proceedings seeking the imposition of these penalties, including the Commission's law enforcement suits under 2 U.S.C. § 437g(a)(6).

As noted in the memorandum regarding the filing of a petition for rehearing, the Office of General Counsel believes that the Commission should accept the court's core application of 28 U.S.C. § 2462 to its enforcement suits as the current state of the law. See Memorandum to the Commission, *Petition for Rehearing, and Suggestion for Rehearing En Banc, In Federal Election Commission v. Williams*, dated January 10, 1997. As also noted, however, we have sought further review of the court's decision

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COMMISSION
SECRETARIAT
MAR 11 1997

relating to issues of equitable relief and equitable tolling.¹ *Id.* See also *FEC v. NRSC*, 877 F. Supp. 15, 21 (D.D.C. 1995).

This General Counsel's Report discusses the impact of 28 U.S.C. § 2462 on the Office of General Counsel's enforcement caseload.² This Report describes the active and inactive enforcement matters which are potentially affected by the application of the five-year statute of limitations under 28 U.S.C. § 2462, and makes recommendations for each of the potentially affected matters. This Report addresses all cases where the statute of limitations potentially expires, or partially expires, by the end of calendar year 1997 (December 31, 1997).

The Office of General Counsel is recommending that

18 matters be closed at this time. By doing so, this Office believes that it will be able to devote more resources toward more recent activity, particularly those matters that arose from the 1996 election cycle. To avoid potential statute of limitations problems in the future, this Office will track its cases against the relevant statute of limitations and will perform regular reviews of its caseload. In addition, this Office will be making periodic recommendations to the Commission with respect to matters that may be affected by the application of the five-year statute of limitations under 28 U.S.C. § 2462.

¹ Pending the court's decision, issues such as equitable relief, equitable tolling, and ongoing violations, will remain open. In some instances, although issues such as equitable tolling and equitable relief may still be viable, this Office has cited other factors to support our recommendation to close the matter. See, e.g., cases involving apparent violations of 2 U.S.C. § 441a(f).

² This Report addresses enforcement matters assigned to the Public Financing, Ethics & Special Projects ("PFESP") and Enforcement areas.

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III. RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

A. Decline to open a MUR, close the file, and approve the appropriate letters in Pre-MUR 344.

B. Take no action, close the file and approve the appropriate letters in the following matters:

1. MUR 4267
2. MUR 4370
3. MUR 4392
4. MUR 4432
5. MUR 4468
6. MUR 4591
7. MUR 4614

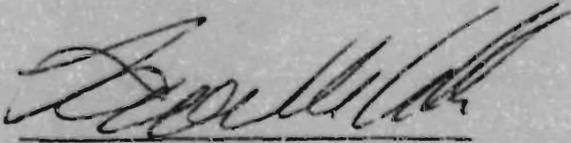
C. Take no further action, close the file and approve the appropriate letters in the following matters:

1. MUR 3351
2. MUR 3571
3. MUR 3582
4. MUR 3586
5. MUR 3838
6. MUR 3841
7. MUR 3969
8. MUR 4091
9. MUR 4183
10. MUR 4209

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3/4/97
Date



Lawrence M. Noble
General Counsel

C. Take no further action, close the file, and approve the appropriate letters in the following matters:

1. MUR 3351;
2. MUR 3571;
3. MUR 3582;
4. MUR 3586;
5. MUR 3838;
6. MUR 3841;
7. MUR 3969;
8. MUR 4091;
9. MUR 4183;
10. MUR 4209.

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

(continued)

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Federal Election Commission
Certification: Agenda Document
#X97-15
March 11, 1997

Page 3

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3-12-97

Date

Attest:

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 2, 1997

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Stephen R. Delinsky, Esq.
Eckert, Seamans, Cherin & Mellott
One International Place, 18th Floor
Boston, MA 02110

RE: MUR 4091
James T. Lichoulias, Jr.

Dear Mr. Delinsky:

This is to advise you that this matter is now closed. 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.

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

Sincerely,

Delanie DeWitt Painter
Attorney

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MUR 4091 (Beth Cataldo)
(audit referral) ('92 cycle)
PFESP Team II

On October 19, 1994, the Commission found reason to believe that Beth Cataldo knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441f by accepting excessive contributions in the form of money orders in the amount of \$9,500 to the Tsongas Committee, Inc. and by permitting her name to be used to effect a contribution in the name of another, assisting and directing campaign staff members to use their names to effect a contribution in the name of another and accepting contributions in the name of another. On October 22, 1996, the Commission found probable cause to believe that Ms. Cataldo knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441(f). On the same date, the Commission approved a conciliation agreement in settlement of this matter with a civil penalty.

This Office recommends that the Commission exercise its prosecutorial discretion and take no further action, and close the file with respect to this matter. This Office believes that it would an inefficient use of the Commission limited resources to pursue this matter further. The activities at issue occurred on December 30, 1991. Thus, litigation to recover a civil penalty may be barred by the five-year statute of limitations.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 2, 1997

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Kenneth A. Gross, Esq.
Skadden, Arps, Slate, Meagher & Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

RE: MUR 4091
Beth Cataldo

Dear Mr. Gross :

On October 22, 1996, the Federal Election Commission found probable cause to believe that your client, Beth A. Cataldo, knowingly and willfully violated 2 U.S.C. §§ 441(a)(f) and 441(f), provisions of the Federal Election Campaign Act of 1971, as amended, by accepting excessive contributions in the amount of \$9,500 to the Tsongas Committee, Inc. and by permitting her name to be used to effect a contribution in the name of another, assisting and directing campaign staff members to use their names to effect a contribution in the name of another and accepting contributions in the name of another.

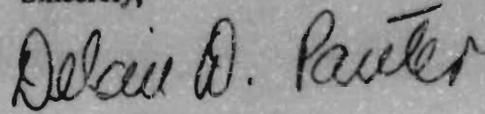
After considering all the facts and circumstances of this case, including but not limited to the applicability of the relevant statute of limitations to some or all of the activity described in the complaint, the Commission has exercised its prosecutorial discretion to take no further action against your client. The Commission reached this determination objectively based upon the information on the record as a whole, the significance of the case relative to others, the amount of time that has elapsed, and other relevant factors. A brief narrative describing the basis for the Commission's decision is attached. Accordingly, the Commission closed its file in this matter on March 11, 1997.

The confidentiality provisions at 2 U.S.C. § 437g(a)(2) 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 the Commission's vote. If you wish to submit any factual and 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 receipt of your additional materials, any permissible submissions will be added to the public record when they are received.

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

Sincerely,



Delanie DeWitt Painter
Attorney

Attachment
Narrative

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**MUR 4091 (Beth Cataldo)
(audit referral) ('92 cycle)
PFESP Team II**

On October 19, 1994, the Commission found reason to believe that Beth Cataldo knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441f by accepting excessive contributions in the form of money orders in the amount of \$9,500 to the Tsongas Committee, Inc. and by permitting her name to be used to effect a contribution in the name of another, assisting and directing campaign staff members to use their names to effect a contribution in the name of another and accepting contributions in the name of another. On October 22, 1996, the Commission found probable cause to believe that Ms. Cataldo knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441(f). On the same date, the Commission approved a conciliation agreement in settlement of this matter with a civil penalty.

This Office recommends that the Commission exercise its prosecutorial discretion and take no further action, and close the file with respect to this matter. This Office believes that it would be an inefficient use of the Commission's limited resources to pursue this matter further. The activities at issue occurred on December 30, 1991. Thus, litigation to recover a civil penalty may be barred by the five-year statute of limitations.

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TRANSCRIPT OF PROCEEDINGS

THE FEDERAL ELECTION COMMISSION

IN THE MATTER UNDER REVIEW)

) No.: MUR 4091
)

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

WITNESS: BETH A. CATALDO

Pages: 1 through 132

Place: Washington, D. C.

Date: July 21, 1995

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THE FEDERAL ELECTION COMMISSION

IN THE MATTER UNDER REVIEW)
) No.: MUR 4091
)

Friday,
July 21, 1995

Federal Election Commission
999 E Street, N.W.
Washington, D.C.

The above-entitled matter came on for hearing,
pursuant to notice, at 10:35 a.m.

APPEARANCES:

On behalf of the Federal Election Commission:

JAMES S. PORTNOY, ESQ.
KENNETH E. KELLNER, ESQ.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463
(202) 219-3690

On behalf of the Deponent:

KENNETH A. GROSS, ESQ.
Skadden, Arps, Slate, Meagher & Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111
(202) 371-7000

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I N D E X

WITNESS:

Beth A. Cataldo

EXAMINATION:

4

EXHIBITS:

PAGE

DESCRIPTION

Commission's

1		126	Financial Statement for
	(Withdrawn)	127	Ms. Cataldo

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P R O C E E D I N G S

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MR. PORTNOY: Would you please state your name for the record and spell your last name.

MS. CATALDO: Beth A. Cataldo, C-A-T-A-L-D-O.

MR. PORTNOY: My name is Jim Portnoy. I am an attorney with the Federal Election Commission, and I will be taking your deposition today. With me is Kenneth Kellner who is also an attorney with the Election Commission.

This investigation is entitled: In the Matter Under Review, MUR 4091, and is authorized by section 437(g) of Title II of the U.S. Code, which provides that the confidentiality of this proceeding must be maintained until the Commission closes the file on the entire investigation.

Do you understand that?

MS. CATALDO: In general, yes.

MR. KELLNER: Did I miss the swearing?

MR. PORTNOY: No. I neglected to ask the court reporter to do that.

Mr. Reporter, will you swear the witness.

Whereupon,

BETH A. CATALDO

having been first duly sworn, was called as a witness herein and was examined and testified as follows:

MR. PORTNOY: I think we can dispense with having to redo the previous personal information?

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1 MR. GROSS: Are you going to be getting me on the
2 record here?

3 MR. PORTNOY: Yeah. That's my next step.

4 MR. GROSS: Okay.

5 EXAMINATION

6 BY MR. PORTNOY:

7 Q Are you represented by counsel today?

8 A Yes.

9 MR. PORTNOY: Counsel, would you identify yourself
10 for the record?

11 MR. GROSS: Ken Gross. Skadden Arps law firm.

12 BY MR. PORTNOY:

13 Q Have you ever been deposed before?

14 A No.

15 Q Have you ever conducted any depositions?

16 A Yes.

17 Q Well, then, you know the deposition is just a
18 sworn interview. It is on the record. It is under oath. I
19 will ask you a series of questions. You should answer
20 completely and truthfully.

21 Do you understand?

22 A Yes.

23 Q I would like you to keep a few things in mind
24 during this deposition.

25 First, if you don't understand a question that I

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1 ask or it doesn't seem clear to you, please don't guess.
2 Please ask me to rephrase the question, and we will try to
3 reach an understanding of what I am asking.

4 Second, please wait until I finish the question
5 that I am asking before you answer.

6 Also, please be sure to answer out loud. The
7 court reporter can't record shrugs or gestures or other
8 non-verbal communication.

9 If you need a break at any time, I will try to
10 accommodate you; but understand that the record remains open
11 until such time as I advise the court reporter otherwise.

12 And, finally, before I begin today, is there any
13 reason you can't be deposed today.

14 A No. Or none that I'm aware of.

15 Q Ms. Cataldo, would you please state your address?

16 A 424 West End Avenue, Apartment 12D, New York, New
17 York, 10024.

18 Q How long have you lived there?

19 A About 19 months.

20 Q And prior to that?

21 A It was 101 Central Park West, New York, New York,
22 10023.

23 Q What's your date of birth?

24 A

25 Q What is your social security number?

1 A

2 Q Are you married?

3 A No.

4 Q Where did you attend college?

5 A Holy Cross College, Worcester, Massachusetts.

6 Q And law school?

7 A Northwestern University in Chicago, Illinois.

8 Q When did you graduate from law school?

9 A 1988.

10 Q Have you discussed your testimony here today with

11 anyone other than counsel?

12 A No.

13 Q In preparing for this deposition, did you review

14 any documents?

15 A No.

16 Q Ms. Cataldo, are you employed?

17 A No.

18 Q When were you last employed?

19 A I was last employed, up until December of '94, at

20 Richards & O'Neil.

21 Q And what was your position at Richards & O'Neil.

22 A I was an associate.

23 Q What was the nature of your practice?

24 A Primarily entertainment-related work. It was

25 considered part of the litigation half of the firm, so to

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1 speak.

2 Q Did your work include anything involving the
3 electoral process?

4 A No.

5 Q What bar associations do you belong to?

6 A What do you mean?

7 Q State bars.

8 A Massachusetts.

9 Q And do you belong to the ABA or any other bar
10 association?

11 A No.

12 Q Any professional writings or publications?

13 A Nope.

14 Q Other than the Tsongas campaign, have you ever
15 been involved in any other political campaign?

16 A Yes.

17 Q Which?

18 A My first campaign was the Dukakis for president
19 campaign in 1988. I was a member of the advance staff for
20 that campaign.

21 After the Dukakis campaign, I worked for the
22 Silber/Clapprood campaign in a voluntary capacity as the
23 scheduler.

24 Q I'm sorry? Can you tell me the name again?

25 A Silber, S-I-L-B-E-R.

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1 Q That's the Massachusetts gubernatorial campaign?

2 A Yeah. In 1990.

3 I was also involved in the Tsongas campaign.

4 And then I worked for the Clinton/Gore campaign.

5 Q In what capacity?

6 A I was in campaign management.

7 Q In Washington or in Little Rock?

8 A No. I actually traveled with Al Gore. I didn't
9 have a home.

10 Q In any of your campaign work, prior to the Tsongas
11 -- or putting aside the Tsongas campaign -- have you ever
12 done any fundraising?

13 A No.

14 Q Have you had any training with respect to Federal
15 Commission rules pertaining to fundraising?

16 A No.

17 Q Okay. Let's talk about the Tsongas campaign.
18 Who was the campaign manager?

19 A Dennis Kanin.

20 Q And who was the chief fund raiser other than you?

21 A Well, at different times, it was different people.
22 When I left the campaign, Chris Neylor took over the
23 fundraising operation from me.

24 Q Is that a man or a woman?

25 A She's a woman.

1 Q Okay. And how do you spell the last name?

2 A N-E-Y-L-O-R.

3 Q Is Chris spelled with a C or a K?

4 A Yeah, C-H.

5 And, you know, chief fund raiser is not a term
6 that I would use. But Nick Rizzo was, you know, a life-long
7 friend of Paul Tsongas who, in prior campaigns had assumed
8 the majority of the fundraising responsibilities.

9 I was never involved in any prior Tsongas
10 campaign. But he was a U.S. Senator and a Member of
11 Congress and probably a city council member as well, and I
12 was not involved in any of those prior efforts.

13 Q How would you describe Mr. Rizzo's
14 responsibilities in the Tsongas campaign?

15 A Those changed as well at different points. My
16 understanding is that when Paul was considering announcing
17 for the presidency in the spring of 1991, Nick Rizzo was
18 involved in the decision to announce for the presidency. In
19 what capacity, I'm not sure.

20 He -- I don't know whether he was being paid by
21 the campaign. When I joined the campaign, which was in
22 around Labor Day 1991, Nick was supposed to be a friend of
23 influence to Paul Tsongas who I could rely upon to clarify
24 or help me with leads for fundraising for the campaign.

25 He did not have an office at the campaign. He

1 lived and worked, as far as I know, in Andover,
2 Massachusetts, which was probably 40 minutes to an hour
3 away, depending on traffic, from Boston.

4 At some point in December of 1991, Dennis Kanin
5 informed me that Nick Rizzo was going to take up an office
6 at the campaign and that he was going to become, in some
7 fashion, a part of the campaign staff on fundraising.

8 And I believe that that happened after I left, but
9 I don't even know that.

10 Q Did Mr. Rizzo have formal responsibilities, to the
11 best of your knowledge?

12 A What do you mean by "formal responsibilities"?

13 Q Were there particular aspects in the campaign
14 fundraising that were in his charge?

15 A You know, to the best of my knowledge, the
16 campaign wasn't that big in the fall of 1991; and Nick had
17 something to do with receiving the contributions at some
18 point. He had a P.O. Box or he was using the office
19 address. He also -- somehow his daughter was involved in
20 tracking the contributions.

21 But the way -- to just save some time -- the way
22 that the campaign was organized, anything to do with
23 recordkeeping, reporting, notices, donors' addresses, and
24 employment, and all of that stuff was kept pretty much, 100
25 percent, separate from the actual fundraising operation.

1 And that was just because I was basically the only staff
2 person for a long time who had any fundraising
3 responsibilities, and I could only work 20 hours a day. So
4 I didn't delve into that side of the campaign.

5 And it's my understanding that Nick Rizzo was
6 involved in that in some ways. It never became clear to me
7 about how they drew the line between Nick Rizzo and Mary
8 Wong on that stuff.

9 But I can just remember that people would mail
10 contributions to an address in Andover. There were people
11 who just mailed checks into the campaign for whatever
12 reason. It wasn't because of the fundraising efforts. I
13 don't know what their desire to contribute to Paul Tsongas'
14 campaign was.

15 But I never really had anything to do with Nick.

16 Q How frequently did you, for example, speak with
17 Mr. Rizzo? Was it every day?

18 A No. I rarely had anything to do with Nick. I
19 would say I talked to him when I first started several times
20 a week. But past October, rarely did I speak with him.

21 Q If you were organizing a fundraising event, did
22 you need to run that past Mr. Rizzo in any way?

23 A No.

24 Q Did you get names or prospects from him?

25 A For the most part, no. He did not have that many

1 leads. It was my experience early on.

2 It's also my understanding that he was working at
3 whatever he does for a living so that to call him about the
4 campaign was interrupting whatever he did for a living. So
5 I tried not to do that indiscriminately.

6 Q If you had to place him in the campaign hierarchy,
7 where would you put him?

8 A He was never in the campaign hierarchy. He was,
9 you know, a 30-year friend of Paul Tsongas.

10 It's my understanding -- and I don't know whether
11 this is true or not, this might be lore -- but when Paul
12 Tsongas had cancer, Nick Rizzo, you know, was with him quite
13 a bit. And you know, he helped him pay bills if that became
14 necessary. He helped him find doctors that were doing
15 experimental treatment on people with lymphoma.

16 So it was described to me as more of a personal,
17 long-time relationship.

18 Q You didn't consider Mr. Rizzo in any way your
19 superior, did you?

20 A No.

21 Q Other than Mr. Kanin, was there anyone that you
22 considered superior?

23 A No.

24 Q Who else was involved in fundraising?

25 A Dennis Kanin occasionally -- obviously, Paul

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1 Tsongas to varying degrees. And then at one point, every
2 staff person was diverted to fundraising. And I had a
3 part-time assistance Loraine Alexander.

4 Q And what were her responsibilities?

5 A Basically just to help out with everything to do
6 with fundraising. She knew a lot of people in the Greek
7 community in Massachusetts because she had worked for a
8 Greek state representative at some point in her career. And
9 so, you know, she did a lot of out-reach to Greeks in
10 Massachusetts.

11 But we didn't have a big enough staff for there to
12 be precise differentiation between people.

13 Q Did you know George Kokinos?

14 A No.

15 Q Did you have an understanding of who he was?

16 A No.

17 Q Would it refresh your recollection if I told you
18 he was the campaign treasurer?

19 A You know, I have seen his name in connection with
20 all of this, but I have no idea who he is. I have never
21 heard of him.

22 Q How about David Goldman?

23 A Yes. He was on the -- as far as I know -- on the
24 Tsongas committee staff, and he had responsibilities for
25 writing checks and overseeing the bank account. And he

1 helped with fundraising in the gay community.

2 Q Mary Wong?

3 A Mary Wong was, to the best of my knowledge, also a
4 paid staff person for the Tsongas committee; and she had
5 responsibility for our computer system, the way that we kept
6 records for the FEC, any reports that had to be done, any
7 notices or letters that had to go out to people.

8 And, you know, I'm sure she was involved in
9 whatever application you have to make to get matching funds.

10 Q When did you first become involved in the Tsongas
11 campaign?

12 A Initially, I was involved in advancing Paul
13 Tsongas's announcement, which was in the spring of 1991.
14 And I was called by -- initially by someone who worked for
15 the Dukakis campaign. I was asked if I would take a few
16 days off of work to help Tsongas to help with his
17 announcement, which I said I would readily do.

18 Q And who was that?

19 A It was either Joyce Carrier. Or it could have
20 been Phil Stanley.

21 But people from the Dukakis campaign in Boston
22 were speaking with the Tsongas campaign people, you know,
23 Tsongas himself and Dennis Kanin, about just the logistics
24 surrounding the announcement.

25 Q Were you paid for doing the advance work?

1 A No.

2 Q About how long did it take? You said it was a few
3 days?

4 A Yeah. I mean we went -- there were some evening
5 meetings, and then it was a few days before the
6 announcement. And then the announcement itself.

7 I was only involved in the Lowell announcement. I
8 think it was the Lowell, Massachusetts, aspect of it. But
9 he actually traveled to a number of different states on that
10 day. Paul possibly went to New Hampshire and Iowa. I don't
11 specifically remember.

12 Q Did you then return to your employment, or did you
13 continue to work on the Tsongas campaign?

14 A No, I just went back to my job. Just took a few
15 vacation days. And really, basically, I had nothing to do
16 with them until, I guess, June of 1991.

17 Q Where were you working at the time?

18 A At Bingham, Baily, Gould.

19 Q Did you do any fundraising at the time?

20 A No.

21 Q Okay. You subsequently took a full-time position
22 with the Tsongas campaign, right?

23 A Yeah.

24 First, though, I went to Iowa with the Tsongas
25 family. They went on vacation in July of 1991, and I was

1 contacted by -- I want to say Andy Paven or someone called
2 to ask me if I wanted to go to Iowa with the Tsongas family
3 on their vacation.

4 So I arranged to take off some vacation time from
5 work, and I went to Iowa with he and his wife and three
6 daughters.

7 Q And this was during the summer of 1991?

8 A Um-hmm. I'm pretty sure it was in July of 1991.

9 Q Did you then return to Bingham?

10 A Yup. Then I we want back to work.

11 When I was in Iowa with Paul and his family, he
12 talked a lot about, did I want to come to work for the
13 campaign; I was the type of person that he wanted; that he
14 was selective about the commitment of the people that were
15 going to work for him; it wasn't going to be a traditional
16 campaign where everybody was strangers; it was going to be
17 people that he felt shared his commitment to, you know, the
18 concepts on which he was going to run.

19 Q When did you join the campaign full time?

20 A It was either August or September of 1991. I
21 think it was around Labor Day.

22 Q And at the time, did you become the director for
23 finance?

24 A Yeah. Dennis Kanin called me at home on a Sunday
25 and asked me if I would want to be the finance director for

1 the campaign.

2 And I basically, said, you know, I have never done
3 any fundraising; this doesn't seem like the right fit. And
4 he said: Well, Paul and I have talked about it and we think
5 that you have the personality to be able to talk to the
6 people in his life that were important to him.

7 And you -- I really -- I guess, yeah, I would have
8 to say I became very close to his wife and his daughters
9 while we were all in Iowa, because we literally drove around
10 in a van through Iowa, which is a state that has vast
11 expanses of corn and did things like went to quilt shops and
12 introduced ourselves.

13 His daughters and I got very close. He has three
14 girls and, you know, I was 27 at the time. And, you know,
15 they really were pleased to have me on their vacation, and
16 we all got along extremely well personally. And I think
17 that led Paul to want to bring me into the campaign in
18 fundraising, he thought that I had the personality, bottom
19 line.

20 And initially, I said, no, I wouldn't do it,
21 because I didn't know anything about fundraising and I only
22 wanted to do it if I knew I could be successful for them. I
23 was very committed to him personally. And I didn't want to
24 be involved in something I couldn't be successful at.

25 Q What was the job to be?

1 A Basically, that they were looking for someone to
2 be the finance director, and they thought that I had the
3 ability to become what they called the next Kristin DeMong,
4 who was someone that was very, very famous during the
5 Dukakis campaign, who, it's my understanding, wasn't
6 involved in political fundraising prior to her going to work
7 in the Dukakis campaign and was just a very energetic person
8 who ended up being a legend, I think, in the campaign.

9 That was the analogy, you know, you can do this,
10 because she did this. And you know, it was -- I was very
11 flattered by that because she was a big deal. And at that
12 time, I think I was unaware of the significant differences
13 between the two campaigns right from the inception. That
14 wasn't apparent to me at the time. I didn't work for the
15 Dukakis campaign in Boston when it first began, so I only
16 had just general knowledge of that.

17 And the differences between the two weren't
18 apparent until later on in my experience.

19 Q I want to come back to my prior question; but,
20 first, what were some of those difference, just out of
21 curiosity?

22 A Well, Mike Dukakis was the sitting Governor in
23 Massachusetts, which I think would help in raising funds.
24 And there had been talk about his candidacy for the
25 presidency for years.

1 He was also a prior head of the Democratic
2 Governors Associations and on all sorts of national boards
3 and had contacts to draw from that were related to his
4 current position.

5 Whereas, Paul Tsongas had not held any public
6 office in many years, so he didn't have a natural base of
7 people that would be interested in his candidacy, you know,
8 based on the sort of traditional reasons that business
9 people give monies to campaigns.

10 Additionally, you know, my sense is that the
11 Dukakis campaign always had many people around and involved,
12 again, because he was the sitting governor, and he was the
13 person who ran the democratic party in Massachusetts.

14 So I'm sure there wasn't any shortage of people to
15 work in a volunteer capacity on the campaign. That can also
16 make a really big difference on how a campaign just gets --
17 really just on a practical matter.

18 Q Okay. To return to my prior question, what were
19 you told you were being hired to do more specifically than
20 just to raise money?

21 A That was it, just to raise money. They said that,
22 you know, Paul -- and I talked to Paul before I took the
23 job. And he said, basically, you know, we will raise money;
24 we will talk to people that I know and prevail upon them to
25 become involved in my mission.

1 Paul Tsongas has a very strong sense of mission
2 about his life. I think in part, he probably had that from
3 his childhood; but having survived cancer, I think that he
4 thinks there is something spiritual about his life.

5 Q Were there specific tasks that you were told that
6 you would be undertaking?

7 A No.

8 Q You weren't given any guidance as to how to do
9 your job?

10 A No. And, you know, I guess to just shorten the
11 process here, basically they called me and they said: Would
12 you like to be the finance director? We think that you can
13 do this, and Kristin DeMong didn't have a background in
14 fundraising.

15 And I said, well, I'm not Chris DeMong at all. I
16 don't know the first thing about this. This is not
17 something that my prior political experience has been
18 concerned with, and I would much rather be on the road and
19 out and about.

20 And they said: Well, oh, of course, you're going
21 to have to travel because you're going to meet all these
22 people that Paul Tsongas inspires around the country; and
23 we'll run, you know, fundraisers nationally, and that's what
24 you'll do.

25 And I met with Paul and Dennis Newman who was

1 working for the campaign. And I met with Dennis Kanin. And
2 basically at the end of that time -- I actually had lunch
3 with Nick Rizzo, as well, in the recruiting process.

4 And, you know, I just decided if they thought I
5 could do it, maybe I could do it. So I decided to make a
6 leap of faith. And you know, we had general conversations
7 about I could hire my own staff and I could have assistants
8 from the former Senate staffers of his.

9 And I wasn't savvy enough to have asked a lot of
10 questions about exactly how we were going to do this. I
11 just didn't get into that. You know, I was more caught up
12 in the flattery of being asked to take this big position
13 with what I thought was going to be a major presidential
14 candidacy.

15 This might not make too much sense to you but it's
16 just that Paul Tsongas in Massachusetts is -- especially at
17 the time, which was prior to his presidential run -- he was
18 an icon. People revered Paul Tsongas so much, you know,
19 they would almost genuflect. He really had sort of an other
20 -- just a position of extreme respect in Massachusetts
21 politics, and I wasn't sophisticated enough to look much
22 beyond that.

23 Q Were you given any notion who you were supposed to
24 report to?

25 A Well, it was obvious, the only person who I would

1 report to would be Dennis Kanin. And he was involved in
2 every single solitary aspect of the campaign down to how
3 many boxes of pencils were ordered.

4 So you didn't have to have an elaborate reporting
5 structure because Dennis Kanin was the only person that you
6 would report to.

7 Q Was there any discussions of how you would
8 interact with Mr. Rizzo?

9 A No. Other than Nick told me when I had lunch with
10 him that if he could be of any assistance to me, he would be
11 happy to do that and that he and Paul had a lot of friends
12 in common and if I had any questions about anyone, Paul
13 thought I could call Nick and ask him before I called the
14 person.

15 And, again, at the time I had the lunch with Nick
16 I hadn't even accepted the job; and I wasn't -- I said,
17 fine. I mean that just -- I didn't have a lot of questions
18 about that. Because, again, just in Massachusetts politics,
19 everyone knew that Paul Tsongas and Nick Rizzo were
20 extremely close, personal friends.

21 Q Was there any discussion about how much money you
22 needed to raise?

23 A I'm sure they said millions. And I'm sure I said
24 fine. But there wasn't a specific goal. You know, the size
25 of that kind of a task and the specifics of that task at the

1 time, again, I didn't ask a lot of questions about that.

2 Q You said there was talk of a staff. Did you have
3 anyone working for you? You mentioned Loraine Alexander.

4 A Yeah. After I started, I went to visit Kristin
5 DeMong who told me all about how she did her fundraising. I
6 took notes. I sketched out what her staff looked like. And
7 she gave me a copy -- some copies from a manual that was
8 produced after the Dukakis campaign was all over about, you
9 know, what they had done to raise the money that they had
10 raised. It was things like: Mike Dukakis is the best
11 candidate in the world, and these are the seven groups that
12 we are going to go after to get this money because once we
13 tell them about Mike Dukakis, they'll instantly give them
14 the money.

15 And she said to me at the time -- which, again,
16 didn't really register with me -- but she said, you have
17 such a gargantuan task ahead of you. I'm glad that you're
18 someone that has so much energy.

19 How she must have perceived this person who was
20 coming to visit her about fundraising for Paul Tsongas'
21 campaign, I can only imagine.

22 But your question is about staff. Once I actually
23 gave my notice at my law firm and quit and went to work with
24 the Tsongas campaign, Dennis said: Well, we will put on
25 hold hiring any staff, why don't you get started.

1 And I put together a chart showing the people I'm
2 going to need, you know, someone to cover the west coast and
3 someone to handle the midwest and I'm going to need people
4 who are Greek to handle the Greeks. You know, I had this
5 whole plan. It was probably 15 people. And he said: Well,
6 we'll just table that for a little while; why don't you get
7 started.

8 Which, at that point, that became more of a
9 difficult discussion, because I was one person, you know,
10 sitting with one phone in the office.

11 And eventually, after a couple of weeks, I mean it
12 was just an impossible task, obviously. So he said: Well,
13 why don't you see if you can bring in, you know, a staff
14 person on a part-time basis to help you out.

15 Because just logistically trying to, you know,
16 write people thank you letters for talking to me, I mean, I
17 thought I should call people and follow up with a letter and
18 then call them back and that kind of thing. And you can
19 imagine.

20 You know, I didn't have a computer terminal. I
21 didn't have a wordprocessor. I was there in the office
22 until 1:00 or 2:00 in the morning going through a list of
23 everyone that I had spoken to that day typing letters to
24 them on a manual typewriter. And I was working seven days a
25 week at this.

1 And it was clear to me, when you considered how
2 vast the country was and how many people just needed to be
3 called and talk to with the candidacy -- and it wasn't a
4 candidacy that couldn't be explained simply. It was a
5 mission in Paul Tsongas's life and all that.

6 So it became obvious in relatively short order
7 that I was not going to be able to do this my myself.

8 Q And so you brought on Loraine Alexander?

9 A Right, who was a part-time employee who had a
10 couple of kids and who, you know, I met with several people
11 -- I don't know how -- whether people recommended her to me.
12 I don't know whether she was recommended to me by Dennis
13 Newman or what. But I just hit it off with her instantly.
14 She was recently divorced and had a couple of kids at home,
15 so she had time. And she didn't want a lot of money. You
16 know, I think we paid her a very small amount of money. And
17 that was my, quote, unquote, staff.

18 Then I was told to recruit volunteers for the rest
19 of anything that I thought I might need.

20 Q And did you?

21 A No. There were some people that volunteered
22 regular with me, yeah. And they came from -- one woman came
23 if -- I can't remember her name -- but she was someone who
24 had worked on Paul Tsongas's congressional campaign.

25 People who had worked for Paul Tsongas in the past

1 are very loyal to him, and they would work a couple of
2 nights a week to help out.

3 In essence, I didn't have a regular staff that
4 would come in during the day to work on fundraising, which
5 made it difficult. And so slowly but surely Dennis began to
6 assign staff people from other areas of the campaign to
7 fundraise, because we were not making payroll, for one
8 thing. And as far as I knew, we were behind in our rent.

9 I mean I really had no sense of the campaign's
10 financial condition. And that was because Dennis Kanin and
11 David Goldman ran -- or decided how we paid the bills,
12 whatever those bills were.

13 Q Did your job responsibilities include developing
14 prospects?

15 A Yes.

16 Q Did you have lists that you worked from?

17 A Not lists -- I didn't buy lists from list
18 companies or anything like that. I would basically call
19 people that Paul Tsongas would say, okay, I'm friends with
20 Michael Kail in Washington. So I would call Michael Kail
21 and say: You know, hi, this is who I am; are you able to
22 host a fundraiser; how can you be helpful; do you know who
23 Paul's friends are when he lived in Washington.

24 You know. And then people would read about the
25 Tsongas candidacy and send in checks unsolicited, and then I

1 would call those people. And one of the struggles with the
2 campaign was that -- that's how I'm aware that mail came
3 into Andover because there was a lag time between whatever
4 mail came in at whatever address it came in and me getting a
5 copy of the letter from those people.

6 I considered that to be a pretty hot prospect at
7 the time. Because if someone were, obviously -- it was just
8 obvious, you know, they would send \$250 to someone that
9 didn't contact them.

10 And then a lot of it was just sort of common sense
11 based on what Kristin DeMong had talked me about over the
12 course of three hours one day, which was, you know, Paul
13 Tsongas is Greek; he's a former U.S. Senator; he's a
14 resident of Lowell; he's, you know, a return Peace Corps
15 volunteer; he's a graduate of Dartmouth College, Yale Law
16 School.

17 So she said, basically, just take these elements
18 of his life and figure out who his inner circle was and then
19 work from that.

20 So I didn't have lists per se, but there was a
21 point in November of '91 where we basically paid whatever it
22 cost to print out a list of Greeks. And we printed out from
23 a system all the Greek people in America that gave money to
24 Mike Dukakis over \$250. And we basically got all the staff
25 persons and then anyone that they were friends with to come

1 in and sit and call these people like around the country
2 that were Greek Americans.

3 Q Where did this list come from?

4 A From our computer system that we had.

5 Q But where was the data base?

6 A I think it was in the computer system, but I'm not
7 sure. Because there was a woman named Pam Lowry, who I
8 don't know personally. But there was some sort of fee paid
9 to her, as far as I know, to allow us to access those names.

10 But the specifics about that, I don't really know.
11 Mary Wong was really the person who dealt with all that
12 stuff, and she had had a similar role in the Dukakis
13 campaign. I, literally, was not in the Boston office. I
14 was an advance person, which means I just went from one
15 state to another. So I never -- what exactly Mary Wong did,
16 I don't know. And whether or not she had proprietary rights
17 to the system or the names, I don't really know. But she
18 used to work with this person Pam Lowry. That's my
19 understanding. And somehow we did whatever we had to do to
20 be able to access these big, huge printouts of Greek
21 Americans.

22 But everyone was put on a calling program which
23 was not very successful, obviously.

24 Q Do you have any reason to believe this was an FEC
25 data base?

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1 A No. I don't know what it was. I mean I don't
2 know what would make it an FEC data base versus any other.

3 Q You just don't have any idea what the source of
4 the data was?

5 A No.

6 MR. GROSS: Do you know what he means by "FEC data
7 base"?

8 THE WITNESS: No.

9 BY MR. PORTNOY:

10 Q All right. I will try it once more. You are
11 aware that upon receipt of the contributions, the campaign
12 has an obligation to report that contribution to the FEC
13 within certain parameters?

14 A Today I am aware of that, yes. At that time, I
15 couldn't have told you that.

16 Q At the time you didn't understand that there was
17 an FEC reporting obligation?

18 A Not particularly, no.

19 Q Okay. Well when I refer to an FEC data base, I
20 refer to the data base containing the information reported
21 to the Commission by all the various campaigns, also from
22 PACs and other sources.

23 Do you have any reason to believe that the list of
24 Greek donors originated from the Federal Election
25 Commission?

1 A No. No. No, it did not originate from the
2 Federal Election Commission.

3 It originated from Mary Wong and Pam Lowry.

4 Q Okay. Did you solicit donors directly?

5 A Yes.

6 Q You might call someone and ask them for a
7 contribution?

8 A Absolutely.

9 Q Did you ever ask for specific amounts?

10 A I'm sure I did, yeah. I mostly didn't call, like,
11 individual people to say: Would you give Paul Tsongas \$250.

12 I would call and say: How would you like to host
13 an event that Paul Tsongas -- former Senator Paul Tsongas,
14 you know, will appear at your home and you can raise money
15 from family and friends and presidential campaign watchers,
16 et cetera.

17 Q But you did sometimes call people to -- ask people
18 directly for money?

19 A Yeah. I mean, I guess I was assuming in the
20 course of that phone call that the people themselves were
21 going to give us money.

22 Or someone had told me, you know, call Paul
23 Tsongas's doctor because he's very interested in the
24 campaign. So I called his doctor -- one of his cancer
25 doctors, and they were people that raised money for the

1 campaign.

2 But I don't think I spent a lot of time just
3 calling up individuals and saying would you give \$250, would
4 you give \$500. I mean, I don't think I did a lot of that,
5 because that just wasn't a cost-effective use of my time.

6 It was mostly trying to get people to raise money
7 through events. That's what we came up with as the main way
8 to try to raise money.

9 Q When you organized an event or precipitated the
10 organization of an event, did you discuss the amount of
11 contribution that would be requested?

12 A In some instances, yes. People would sort of tell
13 me: Well, I think I can raise \$10,000; and I'm going to
14 have a bunch of my friends over there.

15 And depending upon who the person was -- like if
16 it was Paul Tsongas's doctor, you know, then I would say to
17 Dennis, you know, "Doc" or whatever the guy's name was, has
18 agreed to raise \$10,000; do you think he can do it. And
19 Dennis would say: Yeah. Yeah, I do think he can do it;
20 he's a doctor, you know, at Dana Farber and has a lot of
21 wealthy friends.

22 So that's what we -- you know, how much they got
23 from each individual wasn't really that big of a concern to
24 me.

25 Q Did you ever receive contributions directly? Did

1 anybody ever hand you a check?

2 A Sometimes, yeah. But sometime people would hand
3 me checks when I was with Paul Tsongas. We would -- we
4 didn't go on a ton of prospecting trips. We were supposed
5 to, but we never did. And sometimes on those prospecting
6 trips, people would give me a check at the end of the
7 prospecting trip or in connection with the prospecting trip.
8 But not very often. Because Paul Tsongas would not ask
9 people for money.

10 Q What did you do with the checks that you received?

11 A I would give them to Mary Wong.

12 Q Did you look at them first?

13 A I'm sure.

14 Q Did you make any judgments about whether they were
15 lawful?

16 A No.

17 Q Did you ever return a contribution because you
18 thought it was unlawful?

19 A No. You know, I never learned how to use the data
20 base at the campaign. So I couldn't even get on and -- we
21 only had, I think, one terminal to it. And that was in
22 Mary's office. Her and David shared an office. They had
23 the only -- other than Dennis Kanin, they had the only
24 office that had a door that locked. My desk was just out in
25 the open. They had a specific little room, and there was a

1 computer in there and a terminal.

2 And the only reason why I know a little bit about
3 this woman, Pam Lowry, is because I wanted to learn, you
4 know, were there ways that we could use our own names that
5 we had in the data base to try to come up with further
6 prospects and stuff. But I never -- it was like every
7 single day went by and it would be 2:00 in the morning and I
8 would be leaving. And then it was the next day. I just
9 never got time. The woman was over in, like, Park Plaza.
10 And I just never, literally, had time to go over and have
11 her show me how the computer system worked.

12 Q Did you ever receive any kind of training or
13 instructions with respect to campaign finance law?

14 A No. And, obviously, that's become, you know,
15 apparent to me now that that was a big problem.

16 But see, Dennis Kanin was not only a lawyer but he
17 was a partner in a very well-respected law firm. And he was
18 very involved in our life vis-a-vis the FEC. He handled
19 whether or not we got matching funds.

20 In fact, we had cake and ice cream the day that we
21 were got matching funds or certification or whatever it is.
22 But I had no reason to doubt that he was doing everything by
23 the books.

24 Q Did the campaign provide you with any materials at
25 all to review with respect to campaign finance rules or

1 laws?

2 A No. I couldn't have told you at the time that
3 there was a specific statute that governed this. I couldn't
4 have told you that at the time. I wouldn't even have known
5 where it was in the United States Code. I wouldn't have
6 known that there was a specific statute that dealt with
7 this.

8 Q Was there anyone in particular on the campaign
9 that you were supposed to speak to if you had questions
10 about the acceptability of contributions?

11 A Dennis Kanin.

12 Q Anyone else?

13 A No.

14 Q Did you ever speak to Kanin about the
15 acceptability of a contribution?

16 A Other than, you know, this incident with Jim
17 Lichoulas, not that I can recall.

18 I, basically, didn't receive checks. You know, I
19 wasn't the person that -- if mail come in to the address --
20 the Two Oliver Street address, I didn't open the mail. I
21 didn't have anything to do with the mail process. I wasn't
22 responsible for our direct-mail program because -- I used to
23 write letters that went out to people that I would type and
24 ask them for contributions.

25 But, because it cost money to have a direct-mail

1 program, Dennis Kanin oversaw that because he always knew
2 how much money we had in the bank and whether or not we
3 could afford to hire a direct-mail company or not.

4 Q Just to be clear, at the time you were serving as
5 finance director, did you have any understanding whatsoever
6 regarding the limits on contributions to a federal campaign?

7 A I knew that there was a \$1,000 limit per person.
8 You know, I didn't even -- I knew you couldn't take
9 corporation contributions. I knew that we were not taking
10 PAC money, and what exactly that meant, other than we
11 weren't taking any of that, that that was a political issue
12 for us, not a legal issue, at least in my mind it was a
13 political issue.

14 That's about it. I mean, I don't know.

15 Q How did you develop your understanding of the
16 limits on contributions? What was the course of your
17 understanding?

18 A Dennis Kanin telling me.

19 Q He told you what?

20 A You know, there's a limit of \$1,000 per person,
21 and you can't take corporation contributions from companies.

22 I'm trying to think if there is anything else. I
23 mean if I had any questions, that's who I would have gone
24 to. And I talked to him, you know, 100 times a day. I
25 would just walk down to his office and talk to him about

1 every single development that happened every day, all the
2 time.

3 Basically, instead of the job growing in terms of
4 -- I thought that I was being hired, in essence, to manage a
5 staff and to figure out a plan.

6 I even wrote a plan to raise money for Paul
7 Tsongas. I spent time my first week doing that. And that
8 became basically ridiculous shortly after I was there. It
9 was obvious to me that the campaign didn't have any money,
10 that I was not going to get a staff, that I was just
11 basically going to be -- you know, whatever I could do was
12 going to be better than what they had to do.

13 There was not a huge base of volunteers to draw
14 upon. Paul Tsongas was a reluctant fundraiser. He didn't
15 like asking people for money. I would go to his home to
16 call people. I had developed these call sheets. And he --
17 I would be sitting there saying, you know, don't forget, you
18 know, at the end of the conversation, you've got to get to
19 the point where you say: Would you have a fundraiser for my
20 campaign. And he would leave that out of the conversation
21 repeatedly, and I would have to call the people back and
22 say: I understand you talked to Paul today, and we are
23 really excited and I'm wondering what your reaction is to
24 having a fundraiser at your home.

25 And I mean it was -- none of this I knew going

1 into it. But I was basically in a position where I was very
2 committed to the Tsongas candidacy. I had quit my job. I
3 couldn't go back. I mean, I couldn't imagine how to go back
4 anyway.

5 And I said: Let me stick it out and see what
6 happens, because see we had a strategy that revolved around
7 Paul winning the New Hampshire primary. And so Paul would
8 say to me: Don't worry. I know things are tight now. But
9 once we win the New Hampshire primary, then we are going to
10 have this explosion and everything will be fine after that.
11 So we just have to hang on.

12 And that strategy, basically, made sense to me.
13 And I was sold on the idea that Tsongas -- no one ever
14 thought he was political viable. When he ran for the
15 Senate, you know, he defeated Ed Brook. I mean, people
16 thought that his candidacy was a joke. It was a crowded
17 democratic primary. And each time in his life he had
18 managed to overcome incredible odds. And I bought into
19 that.

20 And so that -- you know, the campaign situation,
21 at the time, I began to spend more and more and more of my
22 time trying to recruit people to have fundraising events for
23 the campaign and not having any time at all to do anything
24 else.

25 So I was pleased that I didn't have responsibility

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1 for a host of things that I didn't have time to even deal
2 with, like the computer system and any reports or anything
3 like that. I just wasn't involved with that. And to tell
4 you the truth, I was happy not to be involved with that
5 because I was working more than 15 hours a day, seven days a
6 week. And that was really deteriorating my health even.

7 Q You have said that it wasn't easy to raise funds
8 for the Tsongas campaign.

9 A Right.

10 Q Did you find that the ease of raising funds
11 changed over time, or was it pretty consistent?

12 A It was consistently difficult.

13 Q Was it difficult in December of 1991?

14 A Yeah.

15 Q Was it any more difficult or less difficult than
16 usual?

17 A Not that I can recall.

18 Q Was there a lot of pressure on the campaign to
19 raise funds to the extent that you are aware?

20 A Yeah. Well, people for one thing -- just
21 logistically, the staff weren't being paid consistently.
22 Myself included, obviously.

23 Q Did you personally feel a great deal of pressure
24 at this point to raise funds?

25 A I didn't feel any more in December than I felt in

1 November. But, yeah, I felt incredible pressure to raise
2 money.

3 And it definitely affected, you know, my
4 commitment. I just figured if I kept working more hours and
5 more hours, then I would be able to produce more for the
6 campaign.

7 I wanted the campaign to be successful, obviously.
8 And everyone -- I mean we had a staff meeting every morning
9 in Dennis Kanin's office. And he would say: Well, you
10 know, we need to raise money. Everyone was aware of it. I
11 mean, at some point, literally every person on the staff was
12 made a fundraising person and given a list of these Greek
13 people to call all day. And they cried. People cried in
14 the office over this because many of the people just -- you
15 know, they had come on -- one woman was an issues person.
16 She cried. She would sit there and cry, literally.

17 It was awful. It was awful. Because people
18 hadn't -- that isn't what they signed up to do. And they
19 didn't like having to sit there with these call sheets and
20 mark down how many phone calls they made in a day. And
21 that's what they did all day to try to raise money.

22 Because we just couldn't seem to get anything
23 started. And unbeknownst to the public, Paul Tsongas was
24 sick quite a bit in the fall of 1991, so he would miss
25 fundraising events, or he would miss days of helping with

1 the campaign because he was ill, which was obviously not
2 something that we wanted anyone to know. The fact that he
3 was a cancer survivor was a major liability in his
4 candidacy.

5 Q Were there any particular campaign needs around
6 the end of December of which you were aware of?

7 Were there any media buys that were on the books?

8 A Not that I know of. I wouldn't have had anything
9 really to do with that.

10 Q Were you aware of any matching fund requirements
11 or dates for submitting matching fund requests?

12 A No. But I know we had a cake and ice cream party
13 when we were certified. And that was told to me as a
14 surprise the same way it was told to the rest of the
15 campaign staff.

16 Q Was there ever any discussion of FEC reporting
17 requirements that might be -- of FEC reports that might need
18 to be filed by at end of the year?

19 A There wasn't a lot of discussion about that, but I
20 was aware -- as December rolled around, I was aware that we
21 were going to have a report, which I would tell you even
22 today, I thought the deadline for the report was December
23 30th of 1991.

24 But that had significance to me solely because
25 there were going to be stories written in the newspaper

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1 about each candidate's viability based on the breadth and
2 the scope of where their contributions were coming from.

3 This was my understanding of it. And so since
4 there would be stories in January, and obviously the
5 New Hampshire primary was in February, we were concerned
6 that we not get any bad press about this or at least not
7 press that would derail the hard work that everyone was
8 putting into New Hampshire.

9 Q Was there concern that fundraising was
10 sufficiently poor that the stories might be negative?

11 A Yeah.

12 Q Do you recall who might have expressed those
13 concerns?

14 A Dennis Kanin.

15 Q Anyone else?

16 A No.

17 Q Do you recall whether those concerns were
18 expressed generally or whether you had specific
19 conversations about the subject?

20 A It was mentioned in the staff meetings, I'm sure,
21 in the morning.

22 Q You don't remember any specific conversations?

23 A No. I think that that was just sort of a
24 well-known campaign factor. I mean, there were just certain
25 principles that we operated under, everyone in the whole

1 campaign.

2 You know, like we're all gearing up for New
3 Hampshire and either Tsongas will become president because
4 he wins New Hampshire or he will lose New Hampshire and the
5 campaign will be over the next day. That's sort of how we
6 looked at it.

7 And that's why when people -- when we weren't
8 being paid in the fall, you know, people could just sort of
9 understand in their own way that we were either going to be
10 paid, you know, because we won New Hampshire, consistently
11 thereafter, and he was going to become president, which we
12 all were working toward that goal, or the campaign was going
13 to be over and you were going to be looking for a job in
14 March -- or whenever the primary was over. There was never
15 a post-New Hampshire strategy. It was New Hampshire or die
16 in the campaign.

17 Q Did you have any kind of fundraising quota?

18 A No.

19 Q Did you have any informal guidelines?

20 A No.

21 Q Like we need to you to raise X amount this week or
22 Y amount this week?

23 A No. You know, but there was incredible duress in
24 the campaign because we weren't raising enough money to pay
25 our expenses. Because, obviously, the first expense that

1 you would pay would be the staff people.

2 And literally if I called someone and said: Will
3 you have a fundraiser in Pittsburgh, I could not send those
4 people materials in the mail, like all the invitations and
5 all the -- normally what you would do is you would say:
6 Okay, send me a list of people, and I'll mail out the
7 invitations, so that you can insure that this is happening.

8 But we didn't have the money to print the
9 invitations. I mean that was just an expense that we were
10 unwilling to bear. So I would sit on the phone with someone
11 in Pittsburgh and say: Okay, who are you going to invite
12 and, you know, gee, you should have a few more people and,
13 you know, we're really excited to be coming to your home;
14 why don't you make the invitation -- you know, talk about
15 your home and how pleased you are to have a Greek person
16 coming to your home who is of such prominence and one of two
17 U.S. Senators of Greek descent.

18 I wouldn't even send the people out the
19 invitations.

20 Q Were you aware of any kind of campaign budget that
21 had specific fundraising benchmarks in it?

22 A No. And if Dennis had ever had one, I'm sure it
23 went off track pretty soon into the campaign.

24 MR. PORTNOY: Let's take five minutes.

25 (Whereupon, a brief recess was taken.)

1 BY MR. PORTNOY:

2 Q You know an individual named James or Jim
3 Lichoulas, don't you?

4 A Yes.

5 Q How do you know Mr. Lichoulas?

6 A He was one of the donors of the Tsongas committee.

7 Q Do you know whether he had a prior relation with
8 Mr. Tsongas?

9 A He did not, not that I'm aware of.

10 Q Do you know how he came in contact with the
11 committee in the first instance?

12 A I don't.

13 Q When did you first come into contact with
14 Mr. Lichoulas?

15 A He called the campaign in the fall of 1991,
16 probably in September, and offered to raise money for us.

17 Q Did you take the call?

18 A You know, we had a receptionist; but if someone
19 called and said I'm calling about fundraising, it would have
20 come to me. So, yes, I took the call.

21 Q He didn't, as far as you know, particularly call
22 you; he just called the campaign?

23 A Yeah, he just called the campaign. He didn't know
24 me.

25 Q Do you recall anything about that phone call, what

1 he might have said?

2 A You know, yeah, my general recollection is that he
3 indicated that he was committed to the Tsongas candidacy,
4 that he was a Greek-American from Massachusetts, and that he
5 thought that Paul's position on deficit reduction and some
6 of the other economic issues made him a very attractive
7 candidate and he would be very pleased and proud to
8 participate in fundraising activities on his behalf.

9 Q Did you suggest any particular activities he might
10 undertake?

11 A Yeah. I said: Why don't you have an event. It
12 was the standard pitch.

13 Q And what was his reaction?

14 A He said he would love to have an event, and he
15 thought he could raise \$10,000 at the event, and that he
16 would talk to, you know, friends and family and get back to
17 me, and that whatever else -- you know, just about the
18 logistics about it.

19 Q And when did you next speak to him?

20 A You know, probably within a few days.

21 Q Had he made any progress towards organizing an
22 event?

23 A I don't know if it was in the next conversation --
24 I had a lot of conversations with Jim Lichoulas -- but at
25 some point he agreed to have an event at his home in

1 Reading. That's what we -- it was, you know, am I going to
2 have it at a place, am I going to have it at my home or, you
3 know, am I going to have it at my office or whatever.

4 So at some point he offered to have it at his home
5 in Reading.

6 Q And did you discuss the details of the event?

7 A Yeah. He was going to have, you know, 40-some odd
8 people, and he was going to raise \$10,000. People were
9 going to give \$250. And they could either give it per
10 person or per couple. He wasn't going to differentiate
11 between that, which was fine.

12 And he wanted to do it at his home. And,
13 apparently, he had a relatively new home or he had just
14 moved there.

15 Q Did you discuss a date for the event?

16 A Many times, yeah.

17 Q Did you ever fix a date for the event?

18 A Many times, yes. We had dates throughout the fall
19 of 1991 to have an event at his home.

20 Q And why didn't it occur?

21 A Each time there was just sort of reason like, my
22 wife is still decorating; you know, and, it's going to
23 happen in a week; why don't we put it off until she finishes
24 decorating; you know, we're having painters come in. You
25 know, it was one reason or another having to do with the

1 fact that this was a relatively new home.

2 Q In each instance, was it Mr. Lichoulas who
3 cancelled the event?

4 A That's my recollection, but it could also be true
5 that we cancelled it once. I mean, I don't really have a
6 specific memory about that.

7 But like I say, there were a lot of instances in
8 the fall of 1991 where Paul Tsongas was not feeling well.
9 So we could have cancelled it once, but I don't have a
10 specific memory about that.

11 I do remember the stuff that he had a new house
12 and the event kept getting put off pending the completion of
13 decorating of the house.

14 Q Did you ever actually meet Mr. Lichoulas?

15 A Eventually I met him, yeah. I believe the first
16 time I met him was at an event at the, Mercantile Bank in
17 Boston. And that was in December of 1991.

18 Q December of 1991?

19 A Um-hmm.

20 Q Do you recall what the event was?

21 A Yeah. There was a reception for an official from
22 Greece that was being held at the bank. The Mercantile Bank
23 is a Greek-owned bank. It's my understanding it's the only
24 Greek-owned bank in Boston.

25 And we -- Paul Tsongas and I and Loraine Alexander

1 went to the event to, basically, schmooze with people in the
2 Greek community.

3 Q So this was not a Tsongas campaign event?

4 A No.

5 Q So you had spoken to Mr. Lichoulas a number of
6 times?

7 A Quite a bit, as had Paul Tsongas on the phone. He
8 was a regular person on the call sheets. And he was
9 extremely difficult to get on the phone. So Paul Tsongas
10 would call him whenever he and I would get together many
11 times a week to do these calls. And many times he would
12 just be leaving a message for Mr. Lichoulas that Paul
13 Tsongas personally had called.

14 Q To go back a step, when you had actually met
15 Mr. Lichoulas at the Mercantile Bank --

16 A I'm pretty sure that's the first time I met him.
17 I can't imagine why I would have met him before that in
18 person.

19 Q Do you recall if there was any conversation at the
20 time about his hosting an event?

21 A Oh, yeah. Yeah. He's one of the reasons -- I
22 knew he was going to this event, so we went to try to see
23 whether or not he was actually going to perform on this
24 commitment. He's on the board of directors of the bank.

25 Q So part of your purpose in attending the

1 Mercantile Bank event was to track down Mr. Lichoulas?

2 A Yes. And to have Paul Tsongas specifically say,
3 you know, I have seen this on my schedule a number of times,
4 and I understand that you have made a commitment and I just
5 want to know, are you going to make good on that commitment
6 or not.

7 Q Did that conversation occur?

8 A Yes.

9 Q What did Mr. Lichoulas say?

10 A He said: Absolutely. I mean, he was meeting Paul
11 Tsongas for the first time in person at the event, and he
12 seemed very pleased to meet him. And he told Paul Tsongas
13 that he, Jim, Lichoulas, was on the board at the bank, which
14 we knew because his name was up or we looked at a brochure
15 about the bank or something.

16 And he said that he knew a lot of Greek people
17 nationally that were a lot more conservative than the Greek
18 people that supported Mike Dukakis in 1988 and that he
19 thought those would be a very good source of contributions
20 for Paul Tsongas.

21 So he was not only going to have the event, but he
22 was going to provide us with, you know, a network of people
23 who were more conservative than the Dukakis donors.

24 And, you know, basically what he was saying was
25 Greeks -- you know, true business people, you know, who were

1 concerned about economic issues. Paul was thought to be a
2 democratic candidate that the business community found
3 palatable.

4 Q During any of your conversations, did
5 Mr. Lichoulas ever offer to make a contribution to the
6 campaign personally?

7 A He had already made a contribution to the campaign
8 in April, I think, of 1991. He gave -- there was one event
9 that happened that was a significant event when Paul Tsongas
10 first announced in April of 1991. And I had nothing to do
11 with that. That was, you know, Paul and Nick and Dennis
12 Kanin and -- I don't even know, partners, I guess, from,
13 Foley Hoag. They sponsored one event.

14 And I believe that there was, like, \$300,000
15 raised at that event. Or there was some huge amount of
16 money raised at that event in April of 1991. And one of
17 those donors was Mr. Lichoulas. At least, to the best of my
18 recollection, that was his contact with the campaign.

19 Q Was it your understanding that he had already
20 contributed the legal maximum?

21 A Yeah.

22 Q Did Mr. Lichoulas -- other than with respect to
23 December 28 through 30th of 1991, did he ever actually raise
24 any money for the campaign?

25 A You know, um, no. It's just that I think that

1 after I left the campaign, he still was on a list of people
2 or he still had contact with the campaign, which is
3 something that I have found out subsequent to that.

4 But I don't know whether or not he ever raised any
5 money for the campaign.

6 Q But he didn't during your tenure?

7 A No. No. But, you know, placed in context, I
8 mean, not that many people were calling me up at the time
9 offering to raise money. So if it seems strange that I
10 would have talked to him on the phone once a week, and even
11 though he kept cancelling, he seemed very nice over the
12 phone.

13 If I couldn't get him on the phone, he would call
14 me back. He would never not call me back. So I never had
15 any reason to think that. Even though it kept getting put
16 off, it was like there was so few people that were willing
17 to raise that kind of money for us that it was worth my time
18 to keep trying to see if I could get him to make good on the
19 commitment.

20 And that's why he appeared on Paul Tsongas's call
21 sheets. And we didn't consider this to be a waste.

22 Q Do you recall meeting with Mr. Lichoulas on the
23 night of December 28, 1991?

24 A Yes, I do.

25 Q Where did you meet?

1 A At his home in Reading, Massachusetts.

2 Q About what time?

3 A You know, after 7:00 p.m. I would say 7:00 or
4 8:00, or 8:30 p.m.

5 Q How did the meeting come about?

6 A He called the campaign. It was a Saturday and I
7 was at work, and he called the campaign and said that he had
8 raised all the money and that -- the conversations had
9 evolved. Since we saw him at the bank, basically what
10 happened at the bank was that Jim said, you know, if I can't
11 raise the money before the end of the year, then I'll -- or
12 if I can't have the event before the end of the year, what
13 I'll do is I'll raise the money; and then you can come to my
14 home in the spring. There's like a park or something in his
15 -- near his back yard. And I'll have an event in the
16 spring; and you, Paul Tsongas, can appear at that event and
17 that will kind of close the loop on the contributions so
18 people that I get money from will be able to meet you.

19 And Paul said, I will absolutely do that. You do
20 not need to worry that if you can't fit this in -- because
21 he told us this whole thing, you know, I have a new house
22 and my wife is really self-conscious about the fact that
23 it's not pulled together properly and that's the reason I
24 haven't had the event, but I'm not going to not have the
25 event.

1 So that was kind of the deal that we cut, was that
2 he was going to raise the money and then the event was going
3 to be that spring or -- you know, it was clearly going to be
4 an outdoor thing -- so when the weather permitted.

5 Q You said that will Mr. Lichoulas called at
6 campaign --

7 A Yes. He called the campaign; and he said, I've
8 raised all the money so come to my house. And he gave me
9 his address. And I said, you know, I'm probably going to be
10 here at work most of the day. And he said just come, you
11 know, whenever you finish with work.

12 Q So you spoke to him personally?

13 A Yes.

14 Q Do you recall about what time of day that was?

15 A I don't. I would imagine it was the afternoon.

16 Q And he asked you to come to his house to do what?

17 A To pick up the contributions, the \$10,000.

18 Q Did he specifically say \$10,000?

19 A He might not have, but he probably said the
20 contributions. And it was only one amount that we ever
21 discussed that he was going to raise. I mean, he may or may
22 not have; but I definitely went all the way to Reading,
23 Massachusetts, thinking that I was pick up all of the
24 contributions, the \$10,000.

25 And Dennis Newman lived right near him, and he --

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1 we had a very specific conversation about this because I was
2 going to be traveling the next day, and I wasn't going to go
3 all the way to Reading, Mass, myself unless I was going to
4 be picking up all these contributions. And Dennis Newman
5 said, I -- this guy, you know, I know that he's going to
6 make good on his commitment; he's a neighbor of mine; here's
7 the directions; here's how you get there. You know, he
8 wrote it all down for me. And I said, fine, I'll go.
9 Because I wasn't going to send someone else, you know, for
10 something this major.

11 Q How did Dennis Newman get into the loop? Did you
12 ask him whether you should go?

13 A Yeah. I mean I think I took the call, you know,
14 just generally out in the middle of the campaign somewhere,
15 because it was a Saturday, and there wasn't a ton of --
16 there was a lot of people at the campaign headquarters but
17 not a ton of phone calls coming in.

18 So I was like, you know, this is Lichoulas; he
19 wants me to come to his house; and how far away is it; you
20 know, where is it. Dennis Newman was like, you should go,
21 because this guy is definitely going to be good for the
22 money.

23 And he was not -- Jim Lichoulas was not someone
24 who people knew as a political contributor from prior
25 campaigns. This was supposedly an ideological commitment

1 that he had to Paul Tsongas.

2 And everyone on the staff knew that -- like they
3 would -- everyone would see the schedule, and they would see
4 "Lichoulas. House Party." And then crossed out. And then
5 "Lichoulas," you know. This was an extraordinarily
6 well-known fact at the campaign.

7 Q You said you arrived at Mr. Lichoulas's home at
8 about 7:30?

9 A Yeah. Or 8:00 o'clock or 7:00. Yeah, sometime in
10 the evening.

11 Q Was Mr. Lichoulas at home?

12 A Yes.

13 Q Was anyone else there?

14 A His wife.

15 Q Did they invite you in? Did you talk at the door?

16 A We talked at the door, and then he said, you know,
17 come on in for a minute and I'll get everything together.
18 And they offered me something to drink. And I was
19 exhausted, and I had something like a 5:00 a.m. or 6:00 a.m.
20 flight the next morning. So I was sort of, like, not
21 interested in staying for a while.

22 But I remember this so well because he said:

23 We're going to the movies. Do you want to come with us?

24 And I remember thinking that that was so strange. And his
25 wife was like: Yeah, why don't you come to the movies with

1 us. And I just was struck by that. Like, what are these
2 people thinking about, you know, why would I go to the
3 movies with them. I just remember that.

4 And I remember he has a huge house.

5 Q So you went inside?

6 A Yeah. I sort of went in toward the front door,
7 and I didn't like go in and sit down. They asked me if I
8 wanted something to drink. And I said, no, I have this
9 really earlier morning flight. And she was like -- he said,
10 why don't you come to the movies with us. And she said she
11 thought that would be great. And I said, you know, I would
12 have to take a rain check on going the movies with them.

13 Then, basically, he came -- you know, he left and
14 she and I chatted. And then he came back with, you know, a
15 list of names on a white sheet of paper, both sides, and two
16 checks.

17 And his wife was standing there. And he said,
18 basically, I have contacted all these people on this list.
19 And it was names and addresses and telephone numbers. And
20 they have all agreed to give the contributions, you know, in
21 the next couple of days. And here's the first two. And the
22 first two names were, like, checked off on the list and they
23 matched the names on the checks.

24 And he said, you know, I'll just get the rest to
25 you on Monday. And I remember standing there thinking, you

1 know, I'm going to murder this man, you know, basically.

2 I mean, I just couldn't believe it at this point.
3 I could not believe it because this was way out of my way.
4 It was very dark at night. You know, it was winter. It
5 was, you know -- it was -- this was just -- it was so
6 difficult to not express frustration at what was clearly a
7 bait and switch situation where I had driven all the way out
8 there.

9 And it was clear that the house -- there were no
10 curtains up, and there wasn't a lot of furniture. It was a
11 huge house. I remember that.

12 So I don't know if part of it was just to get me
13 to see that he wasn't lying about the status of his house.
14 But I remember being extremely upset and not being in a
15 position to show that, obviously, trying to be gracious.

16 Q Do you recall the names of the people from whom he
17 gave you checks?

18 A No. It's my recollection that they were Greek
19 names. And it's also my recollection that the names on the
20 sheet were Greek names.

21 Q Do you recall any of the names on the sheet?

22 A Huh-uh. No.

23 But, you know, this hasn't come up, but when we
24 went to the Mercantile Bank event, which was maybe a week or
25 two before this, we were told -- Paul Tsongas and I were

1 told by people at the event that they were going to give his
2 candidacy money through the Lichoulas event.

3 And it was very clear to us at the Merc Bank event
4 that Jim Lichoulas had talked to these people that were
5 there for this event about giving at his event. And you
6 have to know -- I don't know how much you've ever had any
7 dealings with the Greek community, but one characteristic is
8 that if they are going to give you \$1,000, they tend to give
9 you, you know, 10 \$100 contributions, because they like
10 having opportunities to go to events.

11 And so there were a lot of wealthy people at this
12 event at the Merc Bank, and they told us, you know, Jim
13 Lichoulas has asked us to come to an event at his house; and
14 we're going to give through the Lichoulas event to your
15 candidacy.

16 And they're kind of like that, the Greeks, you
17 know, they're very sort of effusive and volunteering that
18 way. It's very consistent with my dealings with them that
19 they would say that -- you know, that they said that to
20 Paul.

21 So it was obvious to Paul and I that Jim Lichoulas
22 had talked to a lot of people about having this event. One
23 of them I remember was a -- specifically was a woman doctor
24 whom, I believe, was also a trustee of the bank or on the
25 board of directors at the bank.

1 And she said, you know, I'm interested in your
2 candidacy and Jim Lichoulas has asked me to help with his
3 house party, and I have agreed to do that.

4 So, basically, you know, I just -- I couldn't
5 imagine how we had come to this point and I was at his
6 house, but I knew that he had talked to people about giving
7 this money.

8 Q Do you recall whether the names on the list were
9 in any particular order? I mean were they alphabetical?

10 A No. I mean I don't have any recollection of that.

11 Q Do you remember anything else at all about the
12 list?

13 A That it was handwritten and that it was both sides
14 of the sheet of paper.

15 Q Do you still have that list?

16 A No. Believe me, I wish I did.

17 Q Did you ever show it to anybody?

18 A I'm sure I did. I'm sure I did when I went to the
19 campaign on Monday.

20 Q Can you think of anyone you might have shown it
21 to?

22 A The most logical people I would have shown it to
23 would have been Loraine Alexander or Dennis Kanin.

24 But, you know, I mean, I wasn't going to engage in
25 the same thing that Jim did. I mean, you know, I don't know

1 whether I did or I didn't. I just -- I have no idea.

2 But Dennis Kanin knew about this because when I
3 went back to my house, you know, after leaving the
4 Lichoulas's house immediately, and I called Dennis Kanin
5 when I got home. And it was now, like, probably, you know,
6 10:00 or 10:30, and I called him at home.

7 And I'm pretty sure that I called him at home
8 because he said to me, call me when you get home. You know,
9 I think it was a rainy night, I mean, or something. I mean,
10 people were definitely concerned about me riding around in a
11 state of exhaustion to get these contributions.

12 So I called him and I said, I only have \$500 in
13 contributions, and he was shocked. And I was, like, I went
14 all the way up there and that's all he gave me, you know,
15 the \$500 and a list of the people he's after. He said these
16 were the people from, you know, the bank event and other
17 events; and he was going to make good on this by Monday.

18 And Dennis was not happy. Dennis Kanin was not
19 happy. I specifically remember that.

20 Q Do you have any idea what happened to the list?

21 A No. I left the campaign so quickly that I didn't
22 clean off my desk or anything. I mean, I left every single
23 thing there. And I would imagine that it was left there as
24 well. And I don't know why anyone would have thought to
25 save it.

1 Q Is there anything else that transpired that night
2 that you haven't mentioned?

3 A No. Other than Dennis was saying to me on the
4 phone, you know, you need to get on him on Monday; and if
5 it's possible -- because I was trying to sort of defend Jim
6 Lichoulas saying, you know, I still think that there is some
7 chance that he's going to do this.

8 I mean, at this point it was just hard for me to
9 say that, but I was trying to say that. I mean I had spent
10 a huge amount of time and Paul's time working on this guy to
11 have this event or to, you know, raise the money. And it
12 was a major disappointment that that hadn't happened. And
13 Dennis was very angry about this. I mean, not just mildly.

14 Q Was he angry at Lichoulas?

15 A Well, yeah, he was angry at Jim Lichoulas and, you
16 know, by extension somewhat angry at me -- not angry at me
17 personally, but just sort of angry that I had spent all of
18 this time and effort on someone who didn't seem like they
19 were going to deliver and how bad that was, basically, to
20 have done that.

21 But the thing is, this was a strange weekend
22 because the next day I was going to Pittsburgh and
23 Cleveland. And Paul Tsongas, on Saturday afternoon, called
24 the campaign and cancelled his own appearance at these two
25 events, and Nicki Tsongas was going to come with me instead.

1 And that is a huge difference. That is -- you know, people
2 do not want to give money to meet the candidate's wife
3 unless that's the deal up front.

4 So Dennis was tempering his -- I was about to have
5 another bad day the next day because my candidate was not
6 coming with me. And his frustration at the situation was
7 tempered by the fact that tomorrow wasn't going to be any
8 better for me personally because I -- we didn't call the
9 people in Pittsburgh and Cleveland and say, Paul Tsongas
10 isn't coming because they would have cancelled the event.
11 We were just going to appear, me and Nicki Tsongas, and say,
12 you know, Paul had a scheduling conflict, which is not the
13 easiest thing in the world to do.

14 And especially, at that time, we did not have big
15 organizations in Pittsburgh and Cleveland and this was
16 supposed to be sort of the first trip to the Greek community
17 in these two places. That was where we supposedly were
18 going to raise more money down the road. And it was pretty
19 clear that this wasn't going -- there was a chance this
20 wasn't going to be extraordinarily well received by the
21 people there.

22 So I think Dennis was preoccupied with making sure
23 that I was going to be in the right mindset for the next
24 day, because this was putting me in a really bad position.
25 And he knew that the flight was -- I think we went to

1 Pittsburgh and Cleveland via Arizona. I mean, we didn't
2 have direct flights. I think we actually went to -- I don't
3 know where we want, but we went neither place direct, to try
4 to save money.

5 So I mean, we -- I was basically, at this point,
6 very close to the edge of my wits. You know, I was to get
7 only a few hours of sleep. These people were going to kill
8 me the next day. I had to worry -- I really had tremendous
9 respect and affection for Nicki Tsongas. And I was
10 concerned she was going to be placed in a very bad
11 situation.

12 And I was literally the only staff person going,
13 which means I had to carry the press packets, you know,
14 everything, aspirin, vodka, whatever. You know, I mean, I
15 was basically, this is not going to be a good time.

16 So he was saying, you know, try to -- just -- you
17 know, I'm going to -- this is not a good situation. I can't
18 believe you went all the way out there; I can't believe
19 this. Then he was, like, you know, tomorrow is going to be
20 great. You guys are going to be fine. Don't -- you know,
21 Nicki makes a great appearance, as you know. Try to just
22 put this behind you and we'll worry about it on Monday.
23 Just get on this man at, like, 7:00 in the morning on
24 Monday. I remember him saying that.

25 Q Well, let's turn to Monday. When did you first

1 speak with Mr. Lichoulas that day?

2 A Around, you know, sometime after 2:00 in the
3 afternoon. But I -- believe me, I got up early on Monday.
4 We got in at, like, 2:00 in the morning from Pittsburgh and
5 Cleveland via Arizona. And we -- I don't mean literally
6 Arizona, but -- anyways, I got up very early, and I went to
7 the campaign at, like, 8:00 a.m. and the first person I
8 called was Jim Lichoulas. And I got, like, his voice mail
9 at work or whatever, and I left him a message -- a lengthy
10 message.

11 And then, basically, the day just began. This was
12 -- in my view -- at the time, I thought this was the day
13 that we had to have all the contributions in for the
14 quarter. And it was my very clear understanding that that
15 30th was the deadline.

16 I found out since that it's probably the 31st.
17 But I didn't know that. So as far as I was concerned, any
18 outstanding commitments that I had -- and I had this huge
19 list of people that were going to drop by the office or that
20 I had to go to their office or whatever.

21 And I had to have, you know, staff people for some
22 of it to do it. I had a whole list of people that I had to
23 get right on, first person being Jim Lichoulas because it
24 was, by far, the biggest amount of money that I had to
25 contact.

1 And so, yeah, Jim Lichoulas called me back that
2 afternoon.

3 Q He called you back, you said, around 2:00 o'clock?

4 A Around. I mean, it could have been 1:30. It
5 could have been 2:30. But it was definitely -- definitely
6 the afternoon. And it actually was probably later than
7 that.

8 Q Do you recall where you were when he called?

9 A Uh-huh. I was at my desk.

10 Q Do you know where he was?

11 A It's my recollection that he was in his car and
12 that I was speaking to him on a car phone.

13 Q Was there anyone else on the phone as far as you
14 know?

15 A You know, I have thought about that because my --
16 I have some sense that his secretary called me and patched
17 him in; but I don't know how she would have done that. But
18 that's kind of what I remember. I don't know why.

19 But, no, I mean, it's possible she patched me in.
20 But at any rate, to the best of my knowledge, it was only
21 Jim Lichoulas and I on the phone, even if she had patched me
22 in.

23 Q Was anyone else listening in at your end?

24 A Not particularly, no.

25 Q Would you describe your conversation with

1 Mr. Lichoulas?

2 A Very short and very -- that's how I remember it
3 was a cellular phone, like, he was in the car talking to me
4 on the speaker; and he was, like, I'm on -- you know, I'm on
5 my way to New Hampshire, but I collected the rest of the
6 contributions; I haven't forgotten about you; just go by the
7 bank and pick them up; and, you know, I'll talk to you next
8 week.

9 It was a very, very short conversation marked by,
10 you know, static.

11 Q Did he tell you the source of the contributions
12 that you recall?

13 A No. But to me at the time it was obvious it was
14 the people on the list.

15 Q So you didn't ask him particularly?

16 A No.

17 Q Did he tell you the amount of the contributions?

18 A No.

19 Q Did you ask him?

20 A No.

21 Q Did he tell you what form the contributions would
22 be in?

23 A No.

24 Q Did you ask him?

25 A No.

1 Q Did he give you any explanation as to why the
2 contributions should be picked up from the bank?

3 A Yeah. That he was, you know, on his way to Lowell
4 or New Hampshire or something and it was something just --
5 you know, they're all sitting at the bank.

6 My impression is that he was very involved with
7 that bank and that, you know, he did a lot of business
8 there, and that he had other business there is what I
9 assumed. You know, he was probably there for some board --
10 you know, a board activity or his own activity.

11 I mean, again, my impression of Jim Lichoulas was
12 that he was a wealthy person in the Greek community who was
13 very involved with this bank, very involved with this bank.
14 And it didn't surprise me at all that he wanted me to go
15 there to pick up the contributions. Because, again, my
16 impression was that people -- I can even remember staff
17 people at the bank saying that they were going to give money
18 through Jim Lichoulas. You know, as far as I knew, he was a
19 major customer of that bank as well so that he had asked
20 maybe staff people and those were some of the reasons why
21 the contributions would be at the bank.

22 But none of this was, you know, reduced to a
23 specific conversation about all this.

24 Q Did Mr. Lichoulas say anything else that you
25 recall?

1 A Not that I recall.

2 Q Did you say anything else to him that you recall?

3 A Not that I recall.

4 Q About how long was your conversation?

5 A A minute, you know, two minutes. It was very
6 brief.

7 Q What did you do after you hung up the phone?

8 A You know, I don't know exactly what I did, but I
9 called the bank to make sure they were still open, and they
10 were. But I remember not having at ton of time to get
11 there. So that tells me something about -- I don't know
12 what time the bank closes. But it was late in the -- it was
13 late enough that I had that concern.

14 And then I had several other stops to make. So I
15 probably made sure I knew where I had to go and gathered up
16 my -- whatever I needed to go with and left the office to go
17 pick these things up which, you know, given the climate of
18 the campaign, everyone knew that I was going to do this.

19 But this was somewhat of an unusual day because
20 Dennis Kanin was not in the office all day. He was at Paul
21 Tsongas's office house discussing very important issues, as
22 to whether or not we were going to proceed with this
23 campaign, basically, because it was outrageous that the
24 candidate had not attended the two fundraisers the day
25 before. And everyone at the staff knew that we couldn't

1 call Paul's house.

2 Normally we would call Paul's house, you know,
3 three, four times a day. And if Dennis would normally be
4 there, you would call him about everything. Because he,
5 very tightly, controlled every single thing about the
6 campaign. He was involved in all of the minutia.

7 If I got a commitment from someone to raise
8 \$1,000, I went in and said, Dennis, I just got a commitment
9 for \$1,000. He kept a running list of the commitments that
10 I had. And part of the exercise in the morning meetings was
11 to go around and say, you know, what each -- what the field
12 was doing, what political was doing. And then he would say,
13 Beth, what's go on with this one, this one; and he would go
14 down that list.

15 And so at any rate, it was an unusual day because
16 he was at Paul's house and there was a "Do not disturb"
17 message left with the scheduler. And everyone knew what the
18 conversation was. Like, why are you, you know, in this if
19 you're going to, you know, not feel well enough certain days
20 that you don't want to go to fundraisers; and these people
21 are working without being paid and we can't continue in this
22 fashion; we have the hardest, however many weeks, until the
23 New Hampshire primary; and you absolutely have to make a
24 decision about whether you want to do this or not.

25 So it was a very serious day, and people were very

1 preoccupied with what was happening at Paul's house, myself
2 included, obviously, having been directly involved in more
3 personal ways with his non-appearance.

4 But, at any rate, I left to go to pick up the
5 money at the bank the contributions and also -- I had one or
6 two other stops, but I don't remember what they were. But
7 people were giving me checks for, at least \$500, because I
8 don't think I would have -- you know, I probably would have
9 sent someone else.

10 One of them was, I think, a lawyer who we hoped
11 would be the head of a lawyers committee for Tsongas, this
12 guy John Bok who was giving these contributions. So I had
13 more than one errand at any rate.

14 B-O-K.

15 Q Was the bank your first stop?

16 A I don't recall. I would imagine it would have
17 been, because I was concerned that it was going to be
18 closed.

19 Q Were you walking, driving, cabing?

20 A I was definitely not cabing. I was driving. But
21 I'm not sure if I drove or if someone else drove. I just
22 don't have a clear memory of that.

23 I remember being concerned about parking. You
24 know, Boston is a difficult city to park in. So that's what
25 leads me to believe I brought someone else with me, so I

1 could double park. But I don't -- I know it wasn't Loraine,
2 for example.

3 Q How do you know that?

4 A Because I have spoken with her since, and I know
5 she didn't come with me. And she would be the logical
6 choice to come with me.

7 Q The bank was still opened when you arrived?

8 A Yes.

9 Q Had Mr. Lichoulas asked you to look for a
10 particular bank employee?

11 A You know, that's kind of my memory. I mean, I
12 knew from -- we were just there a couple of weeks ago, so I
13 knew people at the bank, you know, that worked there.

14 So I think he might have said, you know, talk to
15 Joe or -- I mean, I don't really remember. But I remember
16 when I arrived they knew me.

17 Q Do you remember whether you spoke with a man or a
18 woman?

19 A I don't. I mean I -- I think it was a man, but I
20 don't know why I think that. It could have been a woman. I
21 mean, I just don't have a specific memory of that. I just
22 remember -- what I do remember is that they knew me at the
23 bank.

24 Q Does it refresh your recollection to hear the name
25 Virginia or Ginny Yeanacopolis?

1 A Not particularly.

2 Q Do you recall --

3 A It sounds like a lot of the other names, to tell
4 you the truth.

5 Q Do you recall actually picking up the checks?

6 A I recall that it was a manilla envelope with my
7 name on it. I remember it didn't take very long, because I
8 know I didn't have a parking spot. It's located -- you know
9 I have never been there since, but it's near Fenway Park and
10 near Kenmore Square. It's a very busy area.

11 So, if I did drive, you know, and left someone in
12 the war car or if someone else drove and I ran in, it was
13 like a very quick situation.

14 Q You said it was a manilla envelope?

15 A Um-hmm.

16 Q The size of a standard sheet of paper or a legal
17 size, do you recall

18 A You know, just a regular -- one of those regular
19 -- I think they're 11 by 13, aren't they? I mean, I don't
20 know what the standard --

21 Q Maybe 14?

22 A Maybe 14. Just a standard-size mail envelope.
23 You know, I didn't really pay that much attention to it.

24 Q Was it a bank envelope, do you recall?

25 A I don't recall if it had the bank name on it or

1 not.

2 Q You said your name was on it?

3 A Um-hmm.

4 Q Do you remember if that was typed or handwritten?

5 A No, I don't remember.

6 Q Did you open the envelope?

7 A Not that I recall. The first time I remember
8 looking at what was in the envelope was in the office. But
9 that's what I remember today.

10 Other people that I have asked about it have said
11 they don't remember me opening it at the office; although,
12 they don't recall me opening it. So I don't know. I mean,
13 I don't have a specific recollection of opening that
14 envelope at the bank or being too concerned about it.

15 I remember feeling very rushed.

16 Q Two days earlier, Mr. Lichoulas had brought you to
17 his house under what you thought was the premise that you
18 would be getting \$10,000 in checks.

19 A That's correct.

20 Q And two days later he sends you to the bank to
21 pick up an envelope full of what is theoretically --

22 A Personal checks, that's what I would --

23 Q -- the remaining checks.

24 A Um-hmm.

25 Q But you didn't open up the envelope to figure out.

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1 what was in it?

2 A You know, I might have. I might have opened it,
3 except for that I don't think I would have left the bank if
4 I had opened it and they were blank. So that's why I don't
5 think I did open it at the bank.

6 I mean, I don't remember having a ton -- you know,
7 I knew here was this -- I remember when he called and he
8 said, you know, you have to go to the bank, I remember
9 thinking, another hurdle. You know, like this just is not
10 going to be easy. This guy just can't swing by the campaign
11 and drop of whatever it is he is dropping off.

12 And something that we haven't touched on, I almost
13 went to his house on Thanksgiving Day to pick up
14 contributions, because he had said he was going to have a
15 lot of relatives at his house at Thanksgiving. And I was
16 going to go over there on the holiday and, basically,
17 interface with him and his relatives to get the
18 contributions on Thanksgiving Day.

19 I didn't end up doing that for what -- you know,
20 he probably said, don't bother; or I'll get them from
21 everyone without you having to come over there.

22 But I was willing to do that at the time. So if
23 there was only -- I went to the bank knowing that there
24 could be, you know, 1 check in the envelope or 10 checks or
25 6 checks or no checks or a note saying, you know, "I promise

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1 to raise money."

2 But I remember at the time at the time feeling,
3 like, whatever it is is more than what we have. You know,
4 and that was kind of just the bottom line. This was just
5 another hurdle that I was going to have to go through with
6 this donor to get him to deliver on the commitment.

7 But they we're not talking about a campaign
8 situation where people were flocking to us to make
9 commitments to Paul Tsongas. And most people who spoke to
10 Paul Tsongas on the phone -- much less, Jim had spoken with
11 him in person -- most people sort of took that seriously.

12 And that's the principles under which I was
13 operating at the time, was that he wouldn't lie to Paul
14 Tsongas's face.

15 Q Did you return to the campaign office?

16 A Yes.

17 Q What did you do when you got back?

18 A You know, came in -- when you walked in the door,
19 the receptionist was right there, so I'm sure I picked up my
20 messages from her, she would have handed them to me.

21 And, basically, it was like an L shaped office,
22 and my portion of the office was down here. So I would have
23 walked back and, you know -- I'm sure I didn't have my purse
24 with me, because I carry a big purse. So I probably threw
25 my keys down or did whatever and then got to the business of

1 opening this up or, you know, putting down my stuff.

2 Q Do you recall opening the envelope at your office?

3 A Again, my memory would have been that I opened the
4 envelope at the office.

5 But my memory is also that Loraine and some other
6 people were around at that time, because her desk was
7 adjacent to my desk. And since this time she has told me
8 that she doesn't remember me opening the envelope there.
9 She just kind of remembers, you know, seeing me pulling
10 something out of the envelope.

11 So I don't really know. You know, it's not broken
12 down in my mind into a discreet set of acts the way, you
13 know, it would be if it had any significance to it.

14 Q Who else had a desk adjacent to yours, if you
15 recall?

16 A We had a couple of volunteer tables, and then the
17 scheduler, and then -- I mean, it was -- it's not a huge
18 space. Andy Paven was not too far away from me.

19 But my desk was -- there was a wall, and my desk
20 and then Loraine's desk, and then some tables where we had
21 people -- they had phones on them, and people made telephone
22 calls from those phones. And then the scheduling area was
23 right there, too.

24 Q Who was the scheduler?

25 A It was a woman whose first name was Jean and whose

1 last name I can't remember, an elderly woman.

2 Q Was there anyone named Judith or Judith Ann? Does
3 that name ring a bell in any way?

4 A No. Judith Ann? No. Judith? No.

5 Q Judy, perhaps?

6 A Not that I know of.

7 Q What did you find when you opened the envelope?

8 A That there were, you know, blank documents labeled
9 money orders.

10 Q Did you count them?

11 A Yes.

12 Q How many were there?

13 A There were 38. At least that's my memory that
14 there were 38.

15 Q Were there any identification numbers that you
16 were aware of?

17 A I don't know. What do you mean? Were they
18 numbered?

19 Q Yeah.

20 A Yeah.

21 Q Was there anything about the numbering that drew
22 your attention to them?

23 A Yeah, it's my memory that they were not
24 sequentially numbered. But I don't know if that's true or
25 not.

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1 Q Because you remember them being non-sequential?

2 A Um-hmm.

3 Q Did you observe how much the money orders were
4 made out for?

5 A Yeah. \$250.

6 Q Were they all the same?

7 A It's my memory they were all the same, yeah.

8 Q Did that strike you as, at all, surprising or
9 unusual?

10 A Well, I was flabbergasted by this turn of events.
11 And this was yet -- I just -- my first thought was that all
12 of these people on the list had done business at the bank
13 and released these funds for these money orders, and that
14 what Jim wanted me to do was to take the people from the
15 list and fill out the money orders, you know, each one
16 individually, just go down the list. That was my thought.

17 And I was sitting there looking at this saying to
18 myself: I'm not going to do that, because you have to sign
19 the people's name; and I'm not going to sign these people's
20 names.

21 And at this point, it's like later in the day and
22 I wasn't going to try to reach all of these people.

23 So the first thing I did was -- I couldn't figure
24 out was this was. It never occurred to me, as strange as
25 this is going to sound, that those money orders came from

1 Jim Lichoulas' bank account. He had never given me any
2 indication that he would personally be willing to give Paul
3 Tsongas \$10,000, at all, and couldn't have given it to him
4 anyways, which I knew. But I just -- he never -- it would
5 never have occurred to me that he would spend his own money
6 on this.

7 And so I tried to reach him on the phone.

8 Q And where did you call him?

9 A I called him at his office. I called him on his
10 cell phone. It's my recollection that I had a beeper number
11 for him. But I don't know whether I did or I didn't. I
12 remember I had a lot of numbers for him. He had an office
13 in more than one place.

14 Q Did you actually reach him?

15 A I did not.

16 Q Did you attempt to call anyone else? Mr. Kanin
17 perhaps?

18 A No. And the reason why I didn't call Dennis at
19 that moment, which is what I normally would have done is
20 because we were under very strict orders not to disturb him
21 at Paul Tsongas's house that day.

22 Q Did you try to reach any of the people on the
23 list?

24 A No.

25 Q Why was that?

1 A Because it just seemed like it was so much work to
2 do, to try to reach each one of those people.

3 Q Did you discuss with anyone what you should do?

4 A You know, again, this is just a memory issue, but,
5 yeah, I mean, I remember sitting there -- you know, it was a
6 very wide open campaign, and this was -- everyone was
7 standing there. I mean, this wasn't hidden in any way. And
8 I remember thinking: What the hell am I going to do?

9 Q But do you have any memory of actually speaking
10 with anyone about this?

11 A Yes. I mean, I would have had to speak to people
12 to get people to sign these things. So I must have talked
13 to them about it.

14 Q But no specific recollections?

15 A No specific recollections, no.

16 Q Did you have any recollection of speaking about
17 this subject with Loraine Alexander?

18 A I mean, we must have; but I don't remember what
19 the conversation was. I mean, she would have been sitting
20 right there. And, you know, other people, Andy Paven, and
21 the scheduler, Jean, and, you know, everyone was around.
22 And this was, like, oh, my God, look at this. You know?
23 And I'm not going to put these people's names on this; and
24 what are we going to do? You know, can't reach Dennis.

25 And so I remembered thinking if people filled them

1 out themselves, that seemed like the lesser of two evils at
2 the time. Under the circumstances of the day, this seemed
3 like the lesser of two evils.

4 And then when Dennis got back to the campaign, I
5 would check with him about whether or not we could negotiate
6 these. And if not, we would just return them.

7 And I remember clearly thinking that we would just
8 reattribute them to the real donors after we tracked down
9 Jim Lichoulas and found out who really gave the money.

10 Again, it had not occurred to me that the money
11 orders had all came from Jim Lichoulas's account.

12 Q At the time did you believe that the money orders
13 represented legal contributions to the committee?

14 A I mean, I didn't have that thought. I didn't
15 think about whether they were legal contributions to the
16 committee. I just didn't think in those terms.

17 Q You knew, didn't you, that the money orders
18 couldn't be negotiated in their current form?

19 A Blank?

20 Q Blank and unsigned?

21 A Yes.

22 Q So what did you do to put them in a negotiable
23 form?

24 A Basically just said, everyone come over and sign
25 these and we'll figure out who really gave the money

1 afterwards and reattribute it to them.

2 Q Did you fill in any of the money orders yourself?

3 A You know, I thought about that, and I don't recall
4 signing my name to them or filling them out, no.

5 But I haven't seen these things since, you know,
6 that day and that time; so I don't have any specific memory
7 of that.

8 I remember that I had a number of number of phone
9 calls coming in and that all this was done in, like, talk on
10 the phone, hang up, you know, come on -- anyone who hasn't
11 signed them, come on over, you know, talk on the phone, hang
12 up.

13 This wasn't like a major, you know, sit down, put
14 on my legal thinking cap, and think through, you know, what
15 I was going to do about this. This was just sort of a rash
16 decision made in the middle of the hellacious day when I was
17 extremely tired. You know, I had had quite a weekend.
18 Specifically the last 24 hours were particularly difficult
19 times, just fatigued. So I just said, let's just sign them;
20 and when Dennis gets back, we'll figure out what to do.

21 Q Do you recall filling in any part of the money
22 orders?

23 A No. And, you know, obviously this has come up. I
24 don't recall dating them at all.

25 And if they are dated differently, which I -- you

1 know, it has come to my attention they might be -- I would
2 say it's because people, you know, wrote the wrong date just
3 out of writing the wrong date. I mean, I don't have any
4 memory of directing people -- in fact, I know I didn't
5 direct people to date them different dates.

6 Q What did you ask the people to do?

7 A Just fill them out to the Tsongas committee and
8 sign them.

9 Q In their own names?

10 A In their own names, yeah.

11 Q Do you recall who you asked?

12 A It was just, like general, anybody, everybody,
13 come on over.

14 Q Do you recall about how many people?

15 A Whoever was there, which wasn't -- you know, at
16 any one time, we had all kinds of people in the office.
17 Anyone that came into volunteer, elderly people that came in
18 and, you know, mailed stuff and -- so anyone who was there
19 would have been invited to come over and sign them.

20 And I'll tell you, at the time, you know, no one
21 seemed to think this was a big deal.

22 Q Did anyone ask you whether it was appropriate or
23 lawful to fill out the money orders?

24 A No.

25 Q Did anyone raise any concerns at all?

1 A The only person who raised any concern was a guy
2 -- and this was after the fact, actually -- was a guy named
3 Ian, who worked as our, like, office manager. He wasn't
4 even the office manager. He was, like, the person who, you
5 know, ordered our supplies and kind of logistically kept the
6 office somewhat in a clean, orderly fashion.

7 And he didn't say anything to me at the time, but
8 -- we'll get to this -- I end up leaving the office. When I
9 came back, he was one of the people that had complained to
10 Dennis that this shouldn't have gone on. And he was someone
11 that we weren't sure what his real loyalties were.

12 Q Who's "we"?

13 A Just the campaign.

14 Q What might they have been?

15 A Well, just to, you know, either press people or
16 the Clinton campaign or just to anything. It was just that
17 we weren't sure whether or not he was, you know, keeping
18 campaign events to himself. That was definitely a concern.

19 Q Might that have influenced your view of any
20 concerns he raised?

21 A What do you mean?

22 Q I mean, you say that you, basically, didn't trust
23 the guy?

24 A Right.

25 Q He raised concerns. Would the fact that you

1 didn't trust him have affected the way you viewed his
2 concerns?

3 A No. Because it was all afterwards. It wasn't
4 until I came back to the office --

5 Q Okay.

6 A -- that I realized that he was one of the people
7 that was saying to Dennis, you know, this is really bad. He
8 worked for Common Cause or something, or he had been a
9 volunteer for Common Cause. And I remember distinctly one
10 of the concerns was that is going to get into the paper,
11 specifically to the Kerry people, because Paul was raising
12 an issue about PAC contributions vis-a-vis Kerry. And that
13 was one of the concerns about this.

14 Q Did anyone refuse to fill out a money order, to
15 your knowledge?

16 A Not to my knowledge, no.

17 Q Just to be clear, do you have any recollection of
18 dating the money orders?

19 A No.

20 Q Do you have any recollection -- do you have any
21 understanding why multiple dates might have been placed on
22 the money orders?

23 A I don't. I don't. Other than if people -- you
24 know, maybe some people thought it was the 29th or the 31st.
25 I really don't have memory --

1 Q Or the 25th. That seems an unlikely date to
2 confuse?

3 A Yeah, definitely. Definitely. The date of the
4 25th, that's really bizarre. Who would have been -- even we
5 didn't work on Christmas. Christmas Eve, but not Christmas.

6 Q Do you recall whether you watched people fill out
7 the money orders?

8 A Yeah. I mean, they were sitting on my desk.
9 There were some on Loraine's desk. There were some, I
10 think, sitting on one of these tables that we had.

11 And I was on the phone. So, yeah, I mean, I saw
12 people fill them out.

13 Q Let me go back a step. Can you think of any
14 reason why someone might have used multiple dates on the
15 money orders?

16 A I can't. I mean, I don't know why they would
17 have.

18 You know, this didn't have a sinister overtone to
19 it at all. So I don't know why anybody would have written
20 the wrong date on there.

21 Q Can you recall the names of anybody who filled in
22 any of the money orders?

23 A Yeah. I remember Andy Paven. There was a woman
24 named Ellie Moran who was a volunteer.

25 Q Could you spell that?

1 A Yeah. M-O-R-A-N. Ellie, E-L-L-I-E.

2 And what's remarkable about that is that she's an
3 older woman and someone that I know has a lot of political
4 experience. And she readily came over and filled one out.
5 So it wasn't like there was any warning bells going off.

6 Q Was there anybody with a last name of Gialetti or
7 something of that sort, starting with a G-I-A? Galetti?
8 Gilette?

9 A It doesn't ring any specific bells. I mean there
10 were people in the office that I -- you know, I really
11 wasn't tracking this. And whether or not people filled out
12 other people's names in addition to themselves, that's
13 perfectly possible.

14 But it wasn't an activity that was happening in
15 any sort of a systematic fashion. You know, basically, this
16 is like a great giant room with lots going on. I mean,
17 people making phone calls, people stuffing envelopes, you
18 know, people doing whatever it is that the campaign did,
19 taking calls and scheduling, the receptionist.

20 I mean, it was a fairly busy, active day. And
21 this wasn't sort of, okay, let's -- you know, I mean,
22 obviously I'm a lawyer. People pay me for advice. It
23 wasn't like a systematic, you know, let's just figure out
24 what we're going to do and then do it in some sort of a
25 scheduled fashion. It wasn't an organized activity. It was

1 sort of, like, okay, fill them out and when Dennis gets
2 back, we'll figure out what to do with it.

3 And meanwhile, you know, people are still calling
4 me, I'm calling them. Other activities are going on. And
5 people are just kind of dropping by, filling them out and
6 leaving or taking them with them and filling them out
7 somewhere else and coming back.

8 Q Were there any limits on how many money orders a
9 person could fill out?

10 A No, not at all. I mean it just wasn't -- no,
11 there weren't.

12 Q Were all the money orders filled out?

13 A I don't know, because I left the campaign
14 abruptly, you know, around 5:00 or 5:30 or 6:00 o'clock.

15 Q What did you do with the money orders after they
16 were filled out?

17 A Well, they were sitting on my desk. And it was my
18 intention to -- before I got the phone call from my sister,
19 it was my intention to just hang on to them until Dennis
20 came back and then review with him what to do with them.

21 And my thinking at the time being that, if he
22 thought it was okay to deposit them, then we would deposit
23 them and then he would have some sort of input into whether
24 -- and how we were going to reattribute them to the people
25 who really gave the money.

1 If he didn't think it was fine to have them filled
2 out, then we would return them to Jim or return them to the
3 bank. And my -- I guess my concern -- in terms of having
4 people fill them out, my concern was that he wasn't going to
5 come back to the campaign until, like 9:00 or 10:00 o'clock
6 at night; and that if it was okay to have other people fill
7 them out, there wouldn't be anybody there to fill them out.

8 And that was my thinking at the time, was that --
9 and that wasn't quite in that logical fashion; but that's
10 what my thinking was at the time, that it was better to have
11 them, you know, filled out and possibly ready, you know, to
12 be deposited if he thought it was okay, than it would be to
13 have him come back and say, you know, now what are we going
14 to do and everybody's gone for the day. And, you know, have
15 him be angry that I hadn't taken whatever steps I could take
16 to get these ready to be deposited, if that was going to be
17 okay. I didn't want him to be angry about that. I
18 specifically remember thinking that at the time.

19 Q We are going to come back to this. I want to
20 explore it with you a little bit, but first, you told me
21 what you intended to do. What did you do with the money
22 orders after they were filled out?

23 A I didn't really do anything with the money orders
24 after they were filled out. I left the office before they
25 were all filled out and left instructions to just, you know,

1 keep them all together on my desk and I would just deal with
2 it as soon as I got back.

3 Q To whom did you give those instructions?

4 A You know, anybody that would have been around. No
5 one specifically.

6 Q So you didn't give them to Mary Wong?

7 A I don't recall giving them to Mary Wong. I don't
8 recall that, no.

9 Q Do you have any recollection of giving them to
10 anybody to hold or process in any way?

11 A No. No. And it would have been -- if they were
12 going to be processed, whatever, to the extent that they
13 were going to be included in the deposit, that would have
14 been either David or Mary because they worked on that
15 process together in their office.

16 But she was well aware of this going on.

17 Q How do you know that?

18 A Because it was something that everyone at the
19 campaign was participating in. I mean, it just wasn't that
20 big of a space. And I didn't think of her as someone at the
21 time that, you know -- what I should have done was gone in
22 and asked her what to do with them. But it didn't occur to
23 me at the time to do that.

24 But I didn't have any -- I don't recall really
25 having any conversation with her about this.

1 Q Do you recall any conversation with David Goldman?

2 A You know, I don't. I really don't. I don't even
3 remember him being around.

4 But I wouldn't -- he's not someone that I would
5 have had a conversation with this about.

6 Q Okay. Just to clarify, when you got back to the
7 office and you realized that the money orders were blank,
8 you decided at that time to have people in the office fill
9 them out?

10 A Well, first I called Jim to see what the story was
11 with this, like what he intended in providing me with these
12 blank money orders.

13 Q But at some point you made a determination --

14 A And I honestly -- well, I assumed that they were
15 from the people's bank accounts that were on the list. That
16 just made sense to me. The numbers of people matched up,
17 and the amount was 250. And as far as I knew, they were
18 people that he knew through the bank and other Greek people
19 that did business at the bank. So that's what I thought.

20 But I remember thinking when I couldn't get Jim on
21 the phone I was not going to fill out these people's names
22 from this list on these money orders.

23 But it was at that -- you know, then it was at
24 that point, sitting at the campaign office, that I asked
25 people to sign them. And then other people asked other

1 people, and it was like people were going around, you know,
2 carrying these money orders.

3 That's why it didn't matter how many people picked
4 up from my desk.

5 Q Did you just make a general announcement?

6 A Uh-hmm. It was, like, everyone come over here and
7 sign these. We're going to figure out what to do with them
8 afterwards. And we'll probably -- you know, when Dennis
9 gets back, we'll deal with it.

10 And I can imagine that not arousing any comment,
11 because Dennis Kanin was involved in the pencils that were
12 ordered, the postage stamps that were ordered, you know, the
13 hours that you were in the office, the -- you know, every
14 aspect of the campaign, every -- down to the amount of pads
15 of paper we had in the office. He had direct control.

16 And his wife and children used to come and have
17 dinner in the office because he wouldn't leave for even an
18 hour. His wife used to bring hot meals for the whole
19 campaign staff. And his kids. He has three little boys.
20 And they would come to the office with all this food. He
21 never left the office, from 8:00 in the morning until, you
22 know, 10:00, 11:00 at night. So his only opportunity to see
23 his children was when his wife brought the meals to the
24 office.

25 And if something happened while he was in there

1 having dinner with his family, you went in and you said, you
2 know, so and so agreed to do this, or this one wants to do
3 that, or how do you want to handle this. And he interrupted
4 them.

5 And particularly me, since I didn't have any
6 staff, you know, I was going through his directory of phone
7 contacts for fundraising ideas; so I would go and say, who's
8 this person or who's that person, constantly, all day.

9 So it would have made sense to people, fine, if
10 Dennis says this is okay, we'll do it.

11 Q It didn't concern you to have a bunch of blank
12 money orders floating around the office in the hands of the
13 people that you didn't even know who had them?

14 A No. I don't remember feeling like, you know,
15 there was anyone there that -- you mean someone would take
16 it and spend it on their own stuff?

17 Q Just any possibility. They are passing around
18 blank \$250 money orders.

19 A Yeah. No, I didn't have any distrust of anyone
20 who was there for that reason. No.

21 And there was only one door out. So maybe that
22 had something to do with it. You had to get by the
23 receptionist who was pretty diligent.

24 Q You said earlier that Ian, the office
25 administrator --

1 A Uh-hmm.

2 Q -- that the campaign had concerns that Ian might
3 be passing information to the press or to other campaigns.

4 A Not as a general matter but about this,
5 specifically.

6 Q Why were you concerned that someone might find out
7 about this?

8 A Because Paul was making repeated press
9 announcements and statements at the time against the Kerry,
10 and possible, the Clinton campaign having to do with PAC
11 monies. That was a very big issue in New Hampshire.

12 And what Dennis' reaction was, initially, to this
13 was a political reaction was, here we are criticizing all of
14 these people for taking PAC money and, you know, we've got
15 this slew of contributions from one donor that is, in
16 essence, the same problem that Paul was talking about with
17 people with PAC money, that it gives, you know, individuals
18 or groups, you know, undue influence on someone's candidacy
19 to take this PAC money.

20 So it was a political problem. And we were
21 concerned that -- in fact, one of the reasons why I agreed
22 to leave the campaign was that it would get into the press
23 that Paul was involved in, you know, getting a whole bunch
24 of money from one source or from the same bank or whatever.

25 At that point, I don't think we knew whether the

1 money came from the bank even, you know whether the
2 Mercantile Bank as a entity had given us the money.

3 So we -- it was a political concern. And the only
4 think that was expressed to me when I returned to the
5 campaign and met with Dennis was that, you know, Ian was
6 upset about this and that he was, you know, saying that this
7 was the same thing as taking PAC money.

8 And Dennis was, like, you know, maybe this guy
9 will drop a dime on us or -- I don't know what's going to
10 happen as a result of this.

11 But I -- the only time I had a direct conversation
12 with Ian was the next day he was crying in the office. And
13 he came up to me and he said, you know, I was one of the
14 people that made a big stink about this; and I had no idea
15 that you were going to have to leave the campaign as a
16 result of this. And he was crying. He was a young guy.
17 And he said it was not my intention, he said, you know, to
18 have you have to leave the campaign.

19 Q But just to reiterate, you don't recall anybody
20 raising any objections of any kind --

21 A No.

22 Q -- before that?

23 A No. Or during. You know, while --

24 Q "That" being said?

25 A Yeah. Or duxing the process, no.

1 Q You said earlier that you don't think you opened
2 the envelope at the bank because you don't think you would
3 have left the bank if you discovered at the time --

4 A Yeah. I think --

5 Q -- it was full of money orders.

6 A Yeah. I think I would have tried to reach Jim
7 Lichoulas right from the bank, if I had opened the envelope
8 at the bank.

9 But, again, that's just speculation. Because I
10 don't have a specific memory of, like, opening the envelope.
11 I couldn't tell you did I push up the clips, or did I tear
12 it open. I mean, I just don't remember that at all.

13 Q About what time was it when you finished passing
14 out and collecting the money orders? Do you recall?

15 A I mean, I didn't finish. They were sitting on my
16 desk. People were coming over and picking them. And at
17 some point my sister called me and asked me to come to her
18 house on an emergency. And so I left, once again, very
19 abruptly.

20 Q Do you recall about how long after you returned to
21 the office this was?

22 A Huh-uh. I don't.

23 Q Half an hour? An hour? Two hours?

24 A It wasn't two hours, no.

25 This whole thing -- I mean, no, it was less than

1 hour after I got back from the office. Because I remember
2 it was rush hour and I had to go through the tunnel and my
3 heart was pounding because my sister had said that she was
4 having a medical emergency and that I needed to go to her
5 house because she had an infant; and I needed to mind the
6 infant while she went --

7 (Telephone ringing.)

8 MR. PORTNOY: Off the record.

9 (Whereupon, a brief recess was taken.)

10 MR. PORTNOY: Back on.

11 BY MR. PORTNOY:

12 Q You were saying that your sister called --

13 A Hm-hmm.

14 Q -- and needed your help.

15 A Hm-hmm.

16 Q Could you explain the circumstances?

17 A Yeah. She called me and said that she had been
18 vomiting that day and that towards the end of the afternoon
19 she was having blood in her vomit. And she was crying. And
20 she just had a baby less than a year old.

21 And she said I have paged, you know, Walt, my
22 husband; and I want you to come over and mind the baby while
23 I go and see what my problem is.

24 So I just said, oh my god, of all days, today,
25 when I've got all this stuff to do; but I just basically

1 hung up with her and ran out the door.

2 I mean this was another thing that happened that
3 wasn't anticipated.

4 Q Did you return to the office that evening?

5 A I did, yeah.

6 Q And what happened when you returned to the office?

7 A When I returned to the office, I, you know, was
8 working at my desk. I saw that Dennis was back.

9 Q About what time was this?

10 A I don't know. I would say 7:00, you know, 6:30,
11 7:00, 7:30. In that range.

12 And, you know, I was dying to know what had
13 happened, basically, with Paul. That was my first thought:
14 Do we have a campaign here or not? And if so, under what
15 circumstances are we going to proceed?

16 So, you know, his door was shut. But I just
17 knocked on the door and went in. And he was sitting in the
18 office with -- I don't remember him being alone, but I'm not
19 sure who else was in there. Maybe David maybe Mary, Andy
20 Paven, Phil Stanley. Like there were only a handful of
21 people that were sort of directors of different divisions.
22 Dennis Newman would have been there.

23 And we talked about what happened at Paul
24 Tsongas's house that day. And then everyone else left, and
25 he was, like, you know, I can't believe this about these

1 money orders; you know, here's Paul making all these
2 statements about PAC money and we have all these money
3 orders; they may have come from Jim solely; they may have
4 come from the bank. You know, this is a political problem.
5 And I'm not sure that it's not going to get out in the press
6 that we had this happen. He said, we have to return these
7 right away.

8 And I said, fine. You know, I don't know who
9 we'll reach Jim Lichoulas, but Dennis is his neighbor; he
10 can just drop them off. You know? And he was, like, this
11 was really stupid; and everyone at the campaign was involved
12 in it. You know, people are complaining about it. You
13 know, I don't know I'm going to do about this. And he said,
14 we need to call Michael Kail to find out -- you know, he
15 knows the most about the law in this area. We need to call
16 him. So we called Michael Kail on the speakerphone.

17 Michael Kail was a lawyer who was Paul Tsongas's
18 neighbor in Washington.

19 MR. PORTNOY: Off the record.

20 (Whereupon, a brief recess was taken.)

21 MR. PORTNOY: Just for the record and in light of
22 the fact that Mr. Kail is an attorney in the campaign who is
23 seeking legal counsel, we will refrain from asking any
24 questions about your conversation with Mr. Kail.

25 But I just want the record to reflect that.

1 BY MR. PORTNOY:

2 Q You spoke with Mr. Kanin, and the two of you spoke
3 with Mr. Kail.

4 A Right.

5 Q And did you have any further conversations with
6 Mr. Kanin following your conversation with Mr. Kail?

7 A Yes.

8 Q Could you tell me about that, please?

9 A It was just -- he said that, number one, we would
10 get, you know, probably Dennis Newman to return these to Jim
11 Lichoulas, that we were going to follow the instructions the
12 lawyer had given us about what to do with those, and that
13 basically I was going to have to leave the campaign for some
14 period of time until this cooled down, and then I would come
15 back.

16 And I disagreed with that. I said I thought that
17 it wasn't as big of a deal as he was making of it and that,
18 you know, we would just -- we could just deal with it with
19 the staff in the morning.

20 And we kind of went back and forth about that.
21 And he said, I think it would be better if you left and, you
22 know, let's let this whole thing cool down and then you can
23 just come back. And I said, if you think that that's in the
24 best interest of the campaign, then that's what I'll do.

25 So that's what I did.

1 Q To be clear, you had an understanding with
2 Mr. Kanin that your departure from the campaign was
3 temporary?

4 A Yes.

5 Q Did you have any understanding about the
6 circumstances under which you might return?

7 A Just when the situation, you know, quieted down.

8 Q Have you had any subsequent conversations with
9 Mr. Kanin about the events of December 30th?

10 A Sure.

11 Q Do you recall when?

12 A I'm trying to think. He -- they eventually -- I
13 did go back to work for the campaign, and I don't remember
14 if we talked about this then or not. I doubt it.

15 And then the next time I talked to Dennis about
16 this was in November of '92.

17 Q And what was the subject of that conversation?

18 A Just that he called me to tell me that there were
19 going to be reporters calling me because there were all
20 sorts of financial improprieties involving Nick Rizzo and
21 that reporters wanted to talk to me about what I knew
22 about that. And he said the issue with the money orders may
23 or may not come up, and you should just be aware of that.

24 And that was the first time I had talked to him --
25 I ran into him once in an airport in somewhere, Washington

1 maybe or something. But it was the first time I had talked
2 with him since probably March of '91. No, March of '92.

3 Q Did he make my suggestions as to how you should
4 respond to reporters' questions?

5 A Yeah, he did. He said that, in his view, number
6 one, I should talk to this guy Ed Jesser who was advising
7 everyone on how to handle the press; and, number two, it was
8 his understanding that with respect to the money order issue
9 that they hadn't talk to anyone who was willing to talk to
10 them on the record. So if I wasn't willing to meet with or
11 talk with a reporter about it on the record that no one else
12 was talking about it on the record.

13 Q Was it his suggestion that you not talk on the
14 record?

15 A Yeah, on the record. Exactly.

16 Q Okay. Did he make any suggestions about what you
17 ought to say in the event that you chose to speak with a
18 reporter?

19 A No.

20 Q Have you spoken with anyone else from the campaign
21 regarding the events of December 30th?

22 A Yeah, I have. I have spoken with Phil Stanley,
23 who was the field director. And he told me that he wasn't
24 at the campaign that day, which I believe, because I don't
25 have any specific memory one way or another of him being

1 there.

2 I have spoken with Andy Paven about this. And
3 Andy was the -- I don't know what his title was. I think he
4 was the trip director and sort of one of our political
5 people.

6 Q What was the nature of the conversation with
7 Mr. Paven?

8 A Well, I talked to him in November of '92 when he
9 was getting calls from the press as well about this issue.
10 And he said that he didn't talk to the reporters on the
11 record and he advised me not to do the same thing. And,
12 basically, he said, you know, I'm sure this is just all
13 going to blow over. This is all ridiculous.

14 None of us knew about the whole issue with Nick
15 until it came out in the paper. You know, Dennis didn't
16 exactly tell me when he called me that -- he just said
17 there's some stuff about Nick, you know, and not following
18 all of the laws of FEC or something. It wasn't -- I don't
19 whether that's because he didn't know or because -- knowing
20 Dennis, I would have to say, he knew I didn't know, and he
21 thought it was better I didn't know anything if I was going
22 to talk to the press than if I knew a little.

23 Q About when did this conversation?

24 A November of '92.

25 Q -- with Dennis occur?

1 A Probably, you know, the beginning of November of
2 '92.

3 Q Was the conversation with Dennis Kanin?

4 A Um-hmm.

5 Q As well as the conversation with Andy Paven?

6 A Yeah.

7 Q Did Andy Paven make substantive comments with
8 respect to the events?

9 A No. No. Other than to say that he had spoken
10 with Scott Lehigh, who's the reporter in question and that
11 he had refused to go on the record.

12 Q Just to be clear, did Phil Stanley have any
13 substantive comments?

14 A No. He just reminded me that he wasn't there that
15 day.

16 Q Was there anyone else that you spoke with?

17 A Lorraine Alexander.

18 Q And when did you speak with her?

19 A I would have spoken with her in November of '92;
20 although, I don't remember that specific conversation, but I
21 would have.

22 And then I have spoken with her -- I have spoken
23 with her, Phil, and Andy, in the last six months a couple of
24 times about this.

25 Q And did Ms. Alexander have any substantive

1 recollection of the events?

2 A Yeah, she did. She said that, you know, just that
3 she was shocked that I had left the campaign over this; and,
4 you know, she remembers us going to the Merc Bank for that
5 event. She remembers meeting Jim Lichoulas for the first
6 time at that event. She doesn't remember me opening the
7 envelope in front of her at all.

8 And she said that -- what else did she say? Just
9 that it was a scattered process. She doesn't remember any
10 conversations her and I had prior to the signing of the
11 money orders.

12 She said, I don't think that there was a
13 conversation prior to everyone just signing these and us
14 just saying to people, just sign them. You know, she
15 doesn't remember there being -- and there wasn't. I mean,
16 it wasn't something that was planned. It was unanticipated
17 to begin with. And then it was something -- an idea that
18 just sort of came together and happened. It wasn't
19 something that was -- everyone sat around a table and said,
20 okay, what are the six possibilities. That's not how this
21 happened at all. This was in the middle of a -- or towards
22 the end of a very busy day that just was a poor judgment on
23 my part, certainly, because I should have -- it should have
24 raised certain instincts in me; but it just didn't.

25 And that's about it, that she remembers this being

1 a very short -- this happening in a very short period of
2 time. It was her practice to leave the office before me.
3 So she doesn't really remember me leaving because my sister
4 was sick. But she probably was gone by that. You know, she
5 worked only on a part-time basis on the campaign.

6 And she just informed me about some of her
7 feelings about what happened afterwards. Because she
8 thought she was going to get -- well, Dennis, apparently,
9 announced the next day that she was going to get my job; and
10 then he proceed to give my job to Chris Naylor. So there
11 were some hard feelings about that.

12 Q Did she say anything else?

13 A I'm sure she did. You know, she has my dog. She
14 adopted my dog during the campaign because I was gone so
15 much I couldn't take care of it. So we talked about my dog,
16 how's her son, and all that kind of stuff.

17 I mean, I really -- this is someone whom I used to
18 see every day that I have tremendous affection for whom I
19 never even talk to any more. So just catching up stuff, not
20 about this.

21 Q Have you spoken about this with anyone else?

22 A Yeah. I have spoken to my parents about this, one
23 or two of my good friends.

24 Let's see. Dennis Karin.

25 Obviously, Ken.

1 That's about it.

2 Q No one else from the campaign?

3 A Yes. Katherine Kurth, who was the Illinois state
4 director for the campaign.

5 Q And was she working from Illinois?

6 A Yes.

7 Q So she wouldn't have been in the office at the
8 time?

9 A No, she wasn't.

10 Q You're aware, I take it, that federal law
11 prohibits individual contributions in excess of \$1,000?

12 A Yes.

13 Q Were you aware of that prohibition on December
14 30th, 1991?

15 A Yes.

16 Q And you're aware that federal law prohibits
17 contributions in the name of another person or the
18 acceptance of a contribution in the name of another person?

19 A Today I am. I know these things in incredible
20 detail. But at the time, no.

21 Q You weren't aware of that at the time?

22 A No. I didn't have any knowledge at all of the
23 federal election laws.

24 Like I said at the beginning of the deposition, I
25 took this position without realizing that there was a body

1 of the statutory law on the issue. I was never given any
2 manuals or anything else concerning this issue or the legal
3 issues. And I didn't realize that -- I mean, if someone had
4 said there is a whole building that constitutes the FEC, I
5 would have been surprised by that. I just didn't have a lot
6 to do with that.

7 And I became overruled shortly after beginning my
8 employment with the campaign and concerned myself more with
9 the raising of the funds and the interpersonal contact and
10 the scheduling of the candidate's time than with any of the
11 reporting or, you know, letter requirements.

12 You know, we didn't ask people to raise money and
13 then provide them with a fact sheet of the law, which a lot
14 of campaigns do, which I was a unaware of.

15 We didn't include information about fundraising to
16 people who were trying to fundraise for us in other states.
17 I just didn't have any knowledge of any of that at all. And
18 if someone had said to me, you know, do you think that
19 you're legally responsible -- personally responsible for
20 activities relating to your job as a campaign fundraiser, I
21 would have said, absolutely not. I would have been sure
22 that there was no way that I could be personally responsible
23 for activities conducted on behalf of the campaign. Because
24 no one ever -- there was no information provided to me to
25 make me aware of that.

1 So, no. I mean, yeah, today I know, you know, an
2 extraordinary amount about this stuff now. But at the time,
3 I had absolutely no idea.

4 Q In light of the knowledge you did have concerning
5 contribution limits, how could your actions in procuring
6 signatures on these money orders have been lawful?

7 A Because my thinking at the time was that it was
8 provisional upon running this by Dennis; and that if he said
9 it was fine, then I was sure it would be fine. And if he
10 said, we can't do this, then, you know, we wouldn't have
11 done it.

12 And I did not think that people filling out the
13 money orders and not depositing them -- I could not imagine
14 there was any legal significance to that at all. In other
15 words, the act of filling them out in and of themselves, to
16 me, didn't have any legal significance. I was -- I knew
17 that there was a definite line that if we had deposited them
18 in the bank, then -- and even then, you know, my
19 understanding at the time was that there wasn't anything
20 that you couldn't correct after the fact. That was just
21 sort of a general understanding I had about the way things
22 worked.

23 So I didn't attach any legal significance to the
24 filling out of the money orders. I just -- like I say, I
25 didn't want to be caught in a situation where Dennis came

1 back at 8:00 or 9:00 at night and everyone had cleared out
2 of the campaign and we had no way to deal with these if he
3 decided at that we could deposit them.

4 Q Did you discuss with anyone at the time your
5 intent to clear this with Dennis Kanin?

6 A Oh, yeah. Everyone knew that. I mean, there was
7 just no way that anything happened at the campaign on any
8 level without it being cleared with Dennis.

9 So, yeah, everyone was aware of that. That was
10 one of the things said to people by me, by Loraine, by
11 anyone that came over, you know, sign these and we'll talk
12 to Dennis about it and we'll only deposit them if he says
13 it's okay. I mean, everyone knew that.

14 Q At any time during your fundraising work with the
15 campaign, did you accept a contribution in the name of a
16 person other than the actual contributor and then have it
17 reattributed?

18 A You know, I personally didn't deal with that
19 stuff; but if we did, then Mary would have dealt with that,
20 Mary Wong. Because, again, one that way we would have known
21 if someone already gave \$1,000 is she would have gone in the
22 computer system and pulled up their name and address; and
23 then she would have dealt with that however she would deal
24 with that.

25 So let's say someone gave 750 and then another

1 time they gave 500, she would have been the one that would
2 have put the person's name, typed it in, you know, it would
3 have sprung up on the computer that they already gave 750.
4 So she would either call or write to the person and say,
5 we're sending back the check because you're over the limit;
6 could you please send us one for -- let's say 250 was the
7 different or whatever the difference was.

8 And in the Greek community, you know, like I said,
9 they like to give -- if they can go to 10 events, they will
10 go to 10 events. That's a fun thing for them. That makes
11 them feel very good about contributing. And they get to see
12 everyone and all that stuff.

13 That was totally her bailiwick. And, you know,
14 I'm not sure why my first thought wasn't to go in and talk
15 to her about what to do with these blank money orders.
16 That's the logical thing to do, because she knew more about
17 it than Dennis did, really, as a practical matter. But, you
18 know, I don't know why I didn't. It was just a really bad
19 judgment.

20 Obviously, if I had gone in and talked to her, she
21 would have had some advice for me; and she would have been
22 free to come out of her office and say, you know, how are we
23 are going to do this, or what are you doing? But she
24 didn't.

25 Q Would you be surprised to know that she has

1 testified to us that she sent David Goldman to tell you
2 precisely that?

3 A Yeah. Because -- I mean, I don't know why she
4 wouldn't have talked to me directly. I mean, I dealt with
5 her every day for months.

6 Q But with that -- with her testimony in mind --

7 A See, that doesn't make any sense to me. I mean, I
8 was closer to her than I was to David. So that doesn't make
9 any sense to me, I guess, that she would say that.

10 Q With that testimony in mind, does it spark any
11 recollection of any conversation with David Goldman?

12 A No. In fact, you know, prior to hearing that, I
13 would say I don't even remember him being there. But it
14 doesn't.

15 And, you know, David's position on the campaign
16 was not senior to mine in any way. So I can't imagine that
17 he would have said anything to me about it. You know, I
18 just -- you know, if you would ask me did David Goldman sign
19 any money orders, I would say maybe. I mean, I really have
20 no idea.

21 The only person that I know that raised a stink
22 about this, and it was after -- well, it was after I left
23 the office for the day -- was Ian. So I'm not aware of any
24 testimony by David about -- or, you know, that he talked to
25 me that day, no, I'm not.

1 And I mean, he was my secret Santa, too, at the
2 campaign. Like, I was pretty close to him. I don't think
3 he would have come out and said, don't do that or something.
4 I mean, I just don't -- I can't imagine him doing that.

5 MR. GROSS: Do you know what a secret Santa is?

6 MR. PORTNOY: I do know what a secret Santa is.

7 Although, in my experience they are randomly
8 selected.

9 THE WITNESS: Yes, it was. I only know this -- I
10 mean, we had -- you know, I had gotten a lot of gifts from
11 David over the course of December that were much bigger
12 gifts than other people got. So that's why I'm just saying,
13 he -- no, he wouldn't have had a cross word for me or come
14 out and said don't do this or something. I mean, I just --
15 and the notion that Mary would send him to talk to me about
16 it is just bizarre to me.

17 BY MR. PORTNOY:

18 Q Can you think of any reason why either Mary Wong
19 or David Goldman would testify to those events if they
20 weren't true?

21 A No. But it's just like anything else, I mean, I
22 don't think -- I think the fallout from this has been pretty
23 bad. And so, I think, just as a natural matter, people seek
24 to distance themselves from things that happen. And I don't
25 think they have any reason to lie at all. But I just -- I

1 don't have any memory of that at all. And the description
2 of it just doesn't make any sense to me.

3 I mean, I talked to Mary Wong every single day,
4 you know, all the time, you know, her family circumstances.
5 I can't imagine why she wouldn't -- if she thought something
6 was wrong with this, that she wouldn't have come and said to
7 me, there is a problem with this. And I can't imagine why I
8 wouldn't have listened to her, because clearly I wouldn't
9 want to do anything that would either hurt the campaign,
10 number one; and, number two, that, you know, had legal
11 consequences for my career? I mean, are you kidding? I
12 mean, why would I do that? You know, it just -- no.

13 So had she said, we have to stop this because we
14 can't -- we have to return blank money orders or that, you
15 know, we have to wait until Dennis comes back, or don't have
16 people do this, then I would have not done it, especially if
17 she had said there's an FEC reason for that, I would not
18 have done it, clearly.

19 And I wish she had come out, obviously. I mean,
20 it's three years later and, you know, I'm still contending
21 with, you know, bad judgment in the course of a couple of
22 hours on one day. I mean, this has just played itself out
23 in my life.

24 So I wish she had come out and said, there's a
25 problem with this; here's what the problem is; here's what I

1 think we can do; and why don't you just chill for a little
2 while; and when Dennis gets back, we'll see if he agrees
3 with me.

4 If she had done that, I wouldn't be sitting here
5 opposite of you today. And I respect her knowledge of these
6 issues. She was our guru on these things. It didn't matter
7 that I was a lawyer and she wasn't. She was the one who
8 knew about this stuff.

9 And had she sent David out -- which I don't even
10 know what that means -- but had she sent David to come tell
11 me not to do this or to come talk to her, I absolutely would
12 have done that, because I knew that she was the one who knew
13 about all this.

14 And it's counterintuitive that I would want to do
15 anything that hurt the campaign or -- much less that I would
16 do anything that would jeopardize my own career in any way.
17 It's beyond me that I would have done that with any
18 knowledge.

19 And it wasn't -- this wasn't an activity that took
20 place in secret. You know, everyone knew about -- everyone
21 was participating in this. There was nothing to hide about
22 it. There was no aspect about it that wasn't wide open for
23 everyone in the campaign to participate in.

24 So, again, if I thought, in some sinister way,
25 that I was doing something that was, you know, against the

1 law and that I was going to be putting my entire legal
2 career in jeopardy, you know, I would like to think I would
3 have at least tried to do it discreetly. You know, and I
4 didn't. That's just not the way this happened.

5 Q If there was no reason why a person couldn't fill
6 out all the money orders or any number of money orders, why
7 did you ask other people to do it, why didn't you just sit
8 down and do it yourself?

9 A You know, I think because I was too busy. Plus I
10 wouldn't have filled out more than three or four of them
11 myself.

12 However, much I had given to the campaign minus,
13 you know, up to that point, maybe 500 bucks or something, I
14 would have only been able to fill out one or two, because I
15 wouldn't have wanted to go over the thousand dollars.

16 Q Doesn't that indicate that you would have
17 considered it is a contribution from you?

18 A Well, my whole thought at the time is that we
19 would reattribute these afterwards. And, again, I only had
20 a general knowledge of what that meant. But I knew that
21 there was a way that you could write to people and say, you
22 know, have it be from this other person. And I wasn't -- it
23 didn't occur to me that that was limited to spouses, anyone
24 that shared a bank account. I mean, I really didn't know
25 the ins and outs of it. But I was generally aware of

1 reattribution as a concept; and I thought, if Dennis decides
2 that we can do this, we will just reattribute these after
3 the fact.

4 And, you know, Dennis did talk to Jim Lichoulas
5 right in the wake of this happening, like the next day. And
6 Jim did not say, these all came from my bank account. And,
7 you know, it's because that was not what we thought at the
8 time.

9 Q But just to be clear, you didn't sign them all
10 yourself?

11 A I would have never signed 38 of them myself,
12 because that would have gone way over the thousand dollars.

13 Q Other than your testimony, is there any kind of
14 evidence you can point to that might help establish that you
15 were working under the belief that these contributions could
16 be reattributed?

17 A No.

18 Q If the contributions were going to be
19 reattributed, what difference did it make that a person
20 signing the check was over their contribution limit?

21 A That thought didn't occur to me at the time. In
22 other words, I didn't really know all the rules of
23 reattribution; so it wouldn't occur to me that someone could
24 fill out more than a thousand dollars worth and then -- my
25 thought about reattribution had to do with, solely, the

1 source of the donation, not the amount.

2 Q You testified a moment ago that you didn't sign
3 all the checks because that would have put you over your
4 contribution limit.

5 A Right. I mean that's one of the reasons why I
6 didn't.

7 Q But you have also testified that you didn't ever
8 intend these to be contributions from you; but, rather, in
9 your estimation, they were to be reattributed to the actual
10 contributor.

11 A Right.

12 Q My question, then, is: If you were not planning
13 to have these contributions as coming from you, what
14 difference did it make whether you had given a thousand
15 dollars or more?

16 A Because to me, at the time, what I thought was
17 that you could reattribute the source of the contribution
18 but that you wouldn't have a -- you would never have a
19 contribution over the amount.

20 See, I didn't understand that the main use of that
21 concept is for people that are married and someone writes a
22 check for two thousand, and one of the partners signs the
23 names; then you get it reattributed between the two of them.
24 Or if the husband gives twice, you know, you can reattribute
25 it to the wife. That was all lost on me.

1 I had no idea about the specifics of
2 reattribution. I just knew there was a way that, instead of
3 it coming from one person, that you had this window of time,
4 which I knew to be a long time, to change who gave the
5 money. And I didn't link that in my mind with anything
6 having to do with the contribution limit. Those were just
7 separate concepts to me.

8 So I figured people in the campaign staff would
9 fill these out; if Dennis thought that we could reattribute
10 them afterwards, that we would deposit them and then -- you
11 know, proceed to reattribute them to the real source of the
12 donors, after the fact. And the limit -- and the difference
13 between the limits -- any limits and the reattribution was
14 something that I just didn't think about at all.

15 You know, this was not a grand scheme. This was
16 sort of like, what do you do now? And just poor judgment
17 about what to do in the absence of knowledge. It wasn't
18 like I sat there and thought it through or I thought about
19 calling Michael Kail, for example, before I had anyone fill
20 them out, which is something else I could have done.

21 It was all conditional -- entirely conditional
22 upon Dennis Kanin returning to the office. So I knew that I
23 would get whatever advice I needed at that point.

24 Q Just to reiterate, did you take any precautions to
25 see to it that the checks were not in any way deposited,

1 negotiated, processed, prior to your clearing them with
2 Mr. Kanin?

3 A Did I take any precautions? Like what do you
4 mean?

5 Q Did you instruct somebody to collect them and hold
6 them? Did you --

7 A Well, it was clear they were all coming back to
8 our area of the campaign; and they were either being put on
9 my desk, Lorraine's desk, or this desk that was right there.
10 So there wasn't any need to tell anyone else that. But,
11 yeah, it was like, when Dennis gets back, we'll just deal
12 with them.

13 You know, people were pretty respectful of
14 everyone's desks and stuff. I didn't have any concern that
15 anyone would do anything with these. No one would take
16 something from my desk and do something with it. They just
17 wouldn't. No one would take it upon themselves to come over
18 and remove these and give them to Mary, which even if they
19 had -- as far as I was concerned, Mary knew -- was well
20 aware that this was going on, number one; and, number two,
21 she would never do anything like deposit these money orders
22 which were being signed with the idea that Dennis was going
23 to review this and approve it. She would never have
24 deposited them in any way without talking with Dennis. So I
25 didn't have to take any precautions.

1 Q You said you returned to work for the Tsongas
2 campaign?

3 A Um-hmm.

4 Q What were the circumstances?

5 A That they were drowning, basically, and looking
6 for people that, you know, knew what they were doing to come
7 and help them.

8 They had a big win in New Hampshire, which I was
9 not a part of. And then I got a call from the Illinois
10 state director saying, we're really short on political
11 people in the Midwest; will you come out here and help. And
12 I said, well, I've got to talk to Dennis about that first.
13 And she said, I already did; he thinks it's a great idea.

14 So I talked to Dennis Kanin, and they put me on a
15 plane, and I went out to Chicago.

16 Q About when was that?

17 A I don't know. I was trying to think about this.
18 I don't remember when the Illinois primary was. But I think
19 it's, like, around St. Patrick's Day, because there's a big
20 St. Patrick's Day parade that all the candidates participate
21 in.

22 So it would have been February. It would have
23 been after New Hampshire.

24 Q Shortly after New Hampshire?

25 A Yeah, I don't remember --

1 Q That's in February. It's got to be shortly after
2 New Hampshire.

3 A Yeah. The New Hampshire primary is at the
4 beginning of February. This was probably the middle or the
5 end of February.

6 You know, but the real -- you know, the real
7 impetus for it was that Illinois and Michigan had primaries
8 -- and maybe even Indiana, I'm not sure -- and they were
9 sorely in need of people that could help them out.

10 Q And what work did you do?

11 A Political work, constituency work and then just
12 raw kind of dealing with the candidate stuff, making sure
13 that he had everything he needed, his speech, you know,
14 materials.

15 Q What do you mean by "political work" and
16 "constituency work"?

17 A You know, talking to all different constituencies
18 on behalf of the campaign. Trying to get them involved in
19 whatever the schedule is going to be that he's going to be
20 out there in Illinois and Michigan.

21 And, you know, just interfacing with all the
22 different political people in Chicago on behalf of the
23 campaign: This is what we're doing. You know, we would
24 like to have you on board.

25 At some point, John Kerry got out and we inherited

1 his whole staff. And that was a political deal that we cut,
2 that we would take them on.

3 MR. GROSS: Bob Kerry.

4 MR. PORTNOY: Bob Kerry.

5 THE WITNESS: What did I say? John? Bob Kerry,
6 yeah. Bob Kerry.

7 So we did -- we got all his staff people. So just
8 stuff like that. Not specifically fundraising stuff at all;
9 although, I knew many of the Greeks, particularly in
10 Chicago. And we had fundraisers while Paul was there. And
11 I dealt with Chris Neylor about anything to do with that.

12 Q Were you paid?

13 A You know, I wasn't. But it's only because then
14 Paul dropped out. So, I mean, I didn't bother to make a
15 deal about salary. I guess I assumed I would be paid
16 whatever I had been paid before. But it was only, like,
17 four or five weeks or whatever.

18 It was another great financial move.

19 Q And you then worked for the Clinton/Gore campaign?

20 A Right. First I worked for the Democratic
21 Convention Committee. I went immediately to work for the
22 Democratic Convention Committee in New York.

23 Q Doing?

24 A I was the director of the troubleshooting
25 operation for the convention.

1 Q What does that mean?

2 A Basically, I developed a mechanism for resolving
3 anything that happened during the convention while it was
4 running.

5 And then also in advance of the convention
6 running, I just sort of -- there would be these things that
7 came out.

8 For example, you know, two months out, the -- what
9 was labeled the headquarters hotel, which was the Hilton
10 Hotel, had no guests. They had done such a job of trying to
11 divert people to other places, the Hilton was now empty.

12 And we had all these events that were going to
13 happen at the Hilton that were, you know, as far as the
14 Hilton was concerned, they were based on high occupancy
15 levels.

16 So I had to, basically, figure out what groups
17 were left out there in the world that were coming to the
18 convention and divert them to the Hilton.

19 I mean, just troubleshooting, you know, all kinds
20 of stuff. I mean, you name it, logistical stuff, political
21 stuff, union issues, whatever. And then the actual week of
22 the convention.

23 I mean, 300 people worked for me in this elaborate
24 operation that resolved anything that happened in the
25 convention that constituted any kind of an issue at all,

1 logistical, political, medical, anything, speaking,
2 production issues. They interfaced -- anyone who had a
3 problem interfaced with people that had a certain label on
4 their body, certain credentials. And then they would figure
5 out how to resolve it. And that was the operation that I
6 figured out and ran.

7 Q And then you went to work for Clinton/Gore?

8 A Um-hmm.

9 Q And you did what?

10 A Mostly management issues. Hiring staff, figuring
11 out a budget, dealing with just the logistics of, you know,
12 getting the plane staff together, getting a Little Rock
13 staff together, how the Gore piece of the pie was going to
14 interface. I did a big communication chart for how the Gore
15 piece was going to interface with the Clinton piece.

16 Management issues. Definitely not fundraising
17 issues.

18 Q And you worked for them through the end of the
19 campaign?

20 A Um-hmm.

21 MR. PORTNOY: Let's take five minutes.

22 (Whereupon, a brief recess was taken.)

23 MR. PORTNOY: Back on the record.

24 I am handing the court reporter a document to be
25 marked as Exhibit Number 1. I am also handing copies to

1 counsel and Ms. Cataldo.

2 (The document referred to was
3 marked for identification as
4 FEC Exhibit No. 1.)

5 BY MR. PORTNOY:

6 Q Could you identify this document for me, please?

7 A Yeah. It's a memo that I wrote to Ken Gross just
8 kind of outlining my financial situation.

9 MR. GROSS: Are we going to get into a whole line
10 of questions about her personal finances at this point?

11 MR. PORTNOY: It was my intention to seek to
12 update the information on this memorandum.

13 MR. GROSS:
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MR. PORTNOY: Off the record.

(Discussion held off the record.)

MR. PORTNOY: Back on the record.

In light of counsel's objection, we have agreed to withdraw Exhibit 1 and to remove it from the transcript of this deposition.

(The document referred to was withdrawn.)

MR. PORTNOY: And we will now go back off the record for a discussion.

(Discussion held off the record.)

MR. PORTNOY: Back on the record.

BY MR. PORTNOY:

Q I have one substantive follow-up question.

When you first spoke with Mr. Kanin following the events of December 30th and you have testified that he expressed his view that you should separate from the campaign and that you didn't agree --

A That's correct.

Q -- did you discuss with him in any fashion your thought process at the time that you procured the signatures

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1 on the money orders?

2 Basically, did you explain to him what you were
3 thinking?

4 A Oh, yeah, I'm sure I did. We were there until
5 after 11:00 o'clock that night. So, yeah, we went over the
6 whole thing.

7 And he knew that this was a total surprise with
8 Jim Lichoulas, because he had followed this saga every step
9 of the way. So he knew that, you know, basically there had
10 been no plan for Jim Lichoulas if -- to the extent, that --
11 we weren't even sure whether Jim Lichoulas had given us that
12 money or not, even that night. And we couldn't reach him by
13 known.

14 So, yeah, we talked about my thought process. We
15 talked about, you know, the political ramifications of this
16 PAC issue, press ramifications.

17 The press secretary came into the meeting. She
18 said that there was no need for me to be terminated or leave
19 the campaign because she felt that she could describe it to
20 the press as, just like any other campaign idea, it came up
21 during the day, it was an idea, and we decided against it.
22 That was her view.

23 I mean, most of the people that had been with the
24 campaign from the beginning were around -- that were around
25 that night were against the thought that I was going to

1 leave the campaign over this.

2 Q Did you discuss with Mr. Kanin your notion of
3 reattribution?

4 A Um-hmm. Yeah, I'm sure I did. And I'm sure he
5 told me that that had absolutely nothing to do with the way
6 the law worked.

7 Q Do you have any more specific recollection than
8 that?

9 A I don't. I don't have any more specific
10 recollection about that. But I remember him telling me that
11 the whole thing was really foolish, that when I came back
12 and realized the money orders were blank, I should have just
13 held on to them until he got back that night and then he
14 would not have been angry with me if we had no way to, you
15 know, deposit them. He said, you shouldn't have thought I
16 would be mad at you; I wouldn't have been.

17 But, you know, whether or not we went into the
18 specifics of how -- how I thought the reattribution law
19 worked or -- I'm sure I said to him at the time, that I was
20 assuming that we could reattribute them. But I'm sure he
21 said, you know, you can't do that in this context.

22 MR. PORTNOY: That concludes our questions. I
23 would like to give you the opportunity to make any statement
24 for the record that you would wish to make.

25 MR. GROSS: Well, I don't think we have any

1 statements for the record. We may have some follow-up
 2 discussions to hopefully resolve these issues, but we don't
 3 have anything to put on the record at this point.

4 MR. PORTNOY: Thank you.

5 That will be the end of our deposition today. We
 6 are, obviously, continuing rather than adjourning; although,
 7 I don't have any reason at this point to anticipate that
 8 would ask you to return.

9 MR. GROSS: All right.

10 MR. PORTNOY: Thank you.

11 (Whereupon, at 2:17 p.m., the hearing was
 12 concluded.)

13 I have read the foregoing pages 1 through 130, and
 14 they are a true and accurate record of my
 15 testimony therein recorded, and any changes and/or
 16 corrections appear on the attached errata sheet
 17 signed by me.

18
 19

20 _____
 Beth A. Cataldo

21 Subscribed and sworn to before me

22 this ____ day of _____, 199_

23 _____

24 Notary Public

25 My Commission expires: _____

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I, Gregg A. Poss, the officer before whom the foregoing testimony was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me and thereafter reduced to typewriting; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto; nor am I financially or otherwise interested in the outcome of the action.



Court Reporter/Notary Public

My Commission Expires:

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