FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

THIS IS THE BEGINNING OF MUR # 4164

DATE FILMED 11/9/95 CAMERA NO. 2

CAMERAMAN EEJ

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Nebraska Democrats *Leading the Way*

715 S. 14th St.
Lincoln, NE 68508
(402) 475-4584
800-742-0025
FAX (402) 475-4639

Joe Butsillos
State Chair

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
DEC 22 12 55 PM '94

December 15, 1994

MUR 4164

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

Dear Mr. Noble:

Nebraska Democratic Party files this complaint, alleging substantial and willful violations of federal law by Mr. Daryl Ingalsbe, Jan Stoney and the Stoney for Senate Committee. They are colluding in a scheme to draw on Mr. Ingalsbe's considerable personal wealth for the benefit of Mrs. Stoney's candidacy. As a result, Mr. Ingalsbe is spending monies well outside the limits of federal law to support Mrs. Stoney, and neither he nor the Stoney campaign is making any public disclosure at all of their activities.

Introduction

The ruse employed by the Respondents is simple. Mr. Ingalsbe is claiming to make "independent expenditure" on behalf of Mrs. Stoney and against the candidacy of her opponent, Senator Bob Kerrey. So far, the known "independent expenditures" have appeared in the form of billboard advertising against Kerrey's re-election to the Senate. A photograph of one such ad is enclosed with this Exhibit as Exhibit "A". The billboard asks that the public "stop Clinton's Puppet Show" and depicts President Clinton manipulating in marionette style a cartoon representation of Senator Kerrey. The ad does not hide its election-influencing purpose, closing at the bottom with "Vote Republican for a Change."

The billboard declares that Mr. Ingalsbe has financed the ad "independently," without the authorization of any candidate, from personal funds. If truly "independent" within the meaning of federal law, Mr. Ingalsbe could make unlimited expenditures for Stoney against Kerrey. If not "independent," Mr. Ingalsbe would be bound like all other contributors by the contribution limitations of federal law -- only $1,000 per election per candidate. In both cases, federal law require public disclosure of this spending.

Sham "Independence" of Ingalsbe

Mr. Ingalsbe is not "independent," however, and his spending is subject to limits that he and the Stoney campaign are willfully ignoring. "Independence" means that an expenditure has been made by

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an individual without the involvement in the campaign he or she is supporting. But Mr. Ingalsbe has been fully involved in the Stoney campaign: in raising funds for that campaign, introducing the candidate to potential supporters and donors, and even consulting with the Stoney campaign on the themes and designs used for this sham "billboard advertising."

(1) Ingalsbe Involvement in the Stoney Campaign

The evidence is clear and beyond dispute. First, Mr. Ingalsbe, the President of Independent Technologies of Omaha, has hosted Mrs. Stoney at a fundraising and meet-and-greet event at his corporate offices. A copy of the invitation or flyer announcing the event is attached as Exhibit "B". The event is stated in clear terms to be a "fundraiser," but also an "opportunity to meet with Jan Stoney." The overall stated purpose of the event is "to send Bob Kerrey back to the restaurant business!"

This does not appear to be the only occasion when Mr. Ingalsbe has hosted an event for Mrs. Stoney. One month before the announced date of the "fundraiser" with Stoney, the Omaha World-Herald reported on another event at the offices of Independent Technologies, with Mr. Ingalsbe present, where "[D]onations were being taken to promote Kerrey's Republican challenger, Jan Stoney." Exhibit "C".

The regulations of the Commission state in clear terms that an expenditure cannot be "independent" if made "through any person who is, or has been, authorized to raise or expend funds" for the candidate. 11 C.F.R. § 109.1(b)(4)(i)(B). Mr. Ingalsbe has made no secret of his fundraising for Mrs. Stoney, having hosted widely advertised events for Mrs. Stoney in his own office and, on at least one occasion, with Mrs. Stoney present. So having raised money for the candidate, the regulations bar him from pretending now to be "independent" from her.

(2) Communication Between Ingalsbe and Stoney Campaign About Billboard Advertising

Nor did the idea for the billboard spring full-blown from the mind of Mr. Ingalsbe. Exhibit "D" is a tape of a newscast featuring comments by the Stoney campaign manager. Over his shoulder, taped to the wall of his office, is visible the same "Stop Clinton's Puppet Show" artwork appearing in the Ingalsbe billboard. So it is apparent that either Mr. Ingalsbe drew the inspiration directly from the Stoney campaign -- or the Stoney campaign was actively informed by him of his plans. In either case, this communication and cooperation around the preparation of the billboard gives the lie to any pretension that this Ingalsbe expenditure is "independent."

The Commission regulations will not permit "independence" in these circumstances. The regulations state that "independence" does not, of course exist where there has been any "arrangement,

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coordination or direction by the candidate or his or her agent prior to the ... display ... of the communication." 11 C.F.R. § 109.1(b)(4)(i). In light of the taped evidence that the design for the billboard was posted on the walls of the Stoney campaign manager, it is obvious that there took place bald-faced and illegal collusion between the Stoney campaign and Mr. Ingalsbe in connection with the billboard campaign.

Ingalsbe Failure to Report

Mr. Ingalsbe forgot, in any event, that an effective falsehood requires some attention to detail. An independent expenditure, such as the one he claims falsely to have made, is reportable to the Federal Election Commission. Mr. Ingalsbe, however, has not filed any such report. So even in the realm of "independence" he claims to have operated in, he broke the law.[1]

Conclusion

The contribution limits of federal law are designed precisely to guard against the use of individual wealth without limits to influence the outcome of federal elections. Stoney and Ingalsbe imagine that they have found a way around the law. The evidence shows that they have not, and the law should be enforced vigorously against Ingalsbe, Stoney and those, such as her campaign manager, actively involved in this scheme.

Because of the seriousness of this violation, including the apparent attempt to willfully deceive about the true collaborative nature of these expenditures, the Commission should conduct this investigation under the "knowing and willful" provisions of the statute. 2 U.S.C. § 436g(a)(5)(B), (C).

Very Truly Yours,

Joe Bataillon, Chairman
Nebraska Democratic Party

---

[1] Mr. Ingalsbe cannot claim that the advertisement was somewhat a "generic" advertisement seeking only votes for Republican candidates across the board. The ad depicts Senator Kerrey -- the puppet in "Clinton's Puppet Show" -- and asks that the show be "stopped" by a vote for Republicans. Under the federal law, an independent expenditure includes precisely such an expenditure "expressly advocating the election or defeat of a clearly identified candidate." 2 U.S.C. § 431(17). Under the statute, a "clearly identified candidate" includes not only candidates specifically named, but also any candidate "whose identity is apparent from unambiguous reference." 2 U.S.C. § 431(18)(C). The reference to Kerrey -- depicted in cartoon fashion -- constitutes identification by "unambiguous reference." So the billboard is without question an independent expenditure seeking the defeat of Bob Kerrey, except that, as shown here, the requisite "independence" is lacking and the billboard was illegally financed in collusion with the Stoney campaign.

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Subscribed and sworn to before me on this 15th day of December, 1994.

Susan M. Spitzmacher

Notary Public

GENERAL NOTARY-State of Nebraska
SUSAN M. SPITZMACHER
My Comm. Exp. Dec. 22, 1996

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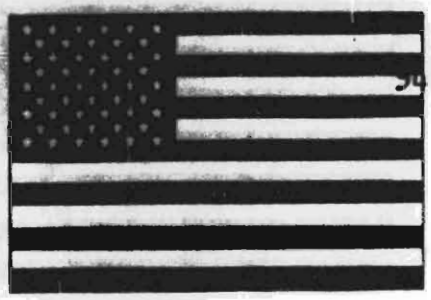
B



Dear Senator:

94 MAY 23 PM 12:02

I contributed and voted for you the last time around. This time no way! You have not voted with a Nebraska conscience. You have supported a tax increase that was clearly unpopular in Nebraska. It appears that you are more interested in headlines and camera coverage than the good of Nebraska.

JAN STONEY
FOR U.S. SENATE

Roger Schunkow

WHEN: *May 25, 1994*
5:00 P.M. - 7:00 P.M.

WHERE: *INDEPENDENT TECHNOLOGIES*
11422 Miracle Hills Drive
Suite 500
Omaha, NE 68154

PS National Healthcare will cost me at least 2 employees

It's time for the conservatives in Nebraska to unite in support of candidates who represent our values.

THE AMERICAN DREAM IS NOT DEAD! *With our support, Jan Stoney will win in November. This fundraiser will be an excellent opportunity to meet with Jan Stoney to express your concerns and ideas on local and national issues.*

It's time to send Bob Kerrey back to the restaurant business!

Please, R.S.V.P. to Linda Mangiamelli, Independent Technologies (402) 496-4700, no later than Friday, May 20.

* *Our contribution objective is $50.00 per person, but any amount will be appreciated.*

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C

Omaha World-Herald

4/16/94

Kerrey Tells Supporters He's Made a Difference

BY C. DAVID KOTOK
WORLD-HERALD STAFF WRITER

Sen. Bob Kerrey used an income-tax day appearance Friday on the eve of his first statewide re-election tour to tell supporters he had made a difference for Nebraska during his first term in the U.S. Senate.

At a fund-raising rally at the Miracle Hills Executive Center attended by nearly 250 people, Kerrey said he will seek another term because of what has been accomplished in Nebraska — not just the national issues that dominate Washington.

The Democratic senator came to the evening event from an all-day tour of nine Omaha-area sites he has helped attain federal assistance.

Stops on the tour included the Thomas Fitzgerald Veterans Home in western Douglas County, an anti-gang project in Papillion, Bosnian relief efforts directed from Offutt Air Force Base, and the Charles Drew Medical Clinic in North Omaha.

Each is a testimony to federal tax dollars well spent, Kerrey said.

"I challenge anybody — it doesn't matter to me if you are a Republican or Democrat, conservative or liberal — if you walk into Charles Drew, you will say with confidence, even on the 15th of April, that you are getting your money's worth," Kerrey said. "There are people whose lives are being saved and changed as a consequence of what we did."

The accomplishments at such sites are a reason for political involvement, Kerrey said.

"It's made a difference what we have done here the last five years," Kerrey said. "And I'm running for re-election not because I am looking forward to going back to Washington. . . . The thing that gives me sufficient amount of joy and satisfaction that I come back and ask for six more years is knowing what you and I can do during that six years."

At the same time as Kerrey's fund-raiser, five stories above in the offices of Independent Technologies Inc., a much smaller gathering was taking place to condemn Kerrey's pivotal role in enacting President Clinton's 1993 budget plan of tax increases and spending reductions. Donations were being taken to promote Kerrey's Republican challenger, Jan Stoney.

Daryl Ingalsbe, president of the company, said the tax increase raised the tax rate on his small business from 31 percent to 44.5 percent. The company dropped plans to hire six engineers, he said.

Ingalsbe, who has worked with anti-tax activist Ed Jaksha on petition drives, said he resents a system that "takes from those of us who produce and gives to those who don't."

Ingalsbe said he did not listen over the atrium balcony to Kerrey speak about the successes in Omaha of joint federal-community projects.

"I don't like his policies," Ingalsbe said. "The Democrats have made us the enemy."

Kerrey is expected to appear at rallies in Omaha, Grand Island, Hastings, Kearney, North Platte, Scottsbluff, Columbus, Norfolk and Lincoln.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 28, 1994

Joe Bataillon, Chairman
Nebraska Democratic Party
715 S. 14th Street
Lincoln, NE 68508

RE: MUR 4164

Dear Mr. Bataillon:

This letter acknowledges receipt on December 22, 1994, of your complaint filed on behalf of the Nebraska Democratic Party alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). The respondent(s) will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 4164. Please refer to this number in all future communications. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosure
Procedures

9504369429 3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 28, 1994

James S. Mitchell, Treasurer
Stoney for U.S. Senate
14441 Dupont Ct
Omaha, NE 68144

RE: MUR 4164

Dear Mr. Mitchell:

The Federal Election Commission received a complaint which indicates that Stoney for U.S. Senate ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4164. Please refer to this number in all future correspondence.

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

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact Alva E. Smith at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

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

95043694295

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

December 28, 1994

Janice D. Stoney
14441 Dupont Court, Suite 100
Omaha, NE 68144

RE: MUR 4164

Dear Ms. Stoney:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4164. Please refer to this number in all future correspondence.

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

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact Alva E. Smith at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

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

95043694297

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

December 28, 1994

Timothy O'Dell, Registered Agent
Independent Technologies of Omaha, Inc.
11422 Miracle Hills Drive, Suite 500
Omaha, NE 68154

RE: MUR 4164

Dear Mr. O'Dell:

The Federal Election Commission received a complaint which indicates that Independent Technologies of Omaha, Inc. may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4164. Please refer to this number in all future correspondence.

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

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact Alva E. Smith at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

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

9504369429 9

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 28, 1994

Daryl Ingalsbe, President
Independent Technologies of Omaha, Inc.
11422 Miracle Hills Drive, Suite 500
Omaha, NE 68154

RE: MUR 4164

Dear Mr. Ingalsbe:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4164. Please refer to this number in all future correspondence.

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

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact Alva E. Smith at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

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

9504369430 1

Independent Technologies, Inc.

11422 Miracle Hills Drive Omaha, NE 68154

(402) 496-4700 Fax (402) 493-5100

January 9, 1995

Faxed: 202-219-3923
U.S. Mail 1/9/95

JAN 13 12 03 PM '95

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

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

Dear Mr. Noble:

This response pertains to MUR 4164.

The complaint filed by the Nebraska Democratic Party was not directed toward and did not specifically mention Independent Technologies, Incorporated. The only implication of involvement stems from stockholder fund-raising activities in our Omaha office.

Our corporate policy dictates that fund-raising activities, held on company premises, be held after normal working hours and that employee involvement may be permissible provided the involvement is occasional and incidental and will not hinder the employee from carrying out their daily work. This policy is in place to meet the requirement set forth in 11 CFR 114.9a.

Because our office space is leased on a fixed cost basis, no increase in the corporation's overhead occurred. Events indicated on complaint exhibits b and c comply with company policy.

Other than allowing for the use of its office space Independent Technologies, Inc. had no other involvement and therefore should not be considered for further action in this matter.

If you have any questions or if I can be of further assistance, please contact me at 402-496-4700.

Respectfully,

Timothy O'Dell
Registered Agent

9504369430 2

Independent Technologies, Inc.
11422 Miracle Hills Drive Omaha, NE 68154
(402) 496-4700 Fax (402) 493-5100

JAN 13 12 12 PM '95
RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

January 9, 1995

Faxed: 202-219-3923
U.S. Mail 1/9/95

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

RE: MUR 4164 dated December 30, 1994.

Dear Mr. Noble:

Until today I had not received the final enclosure pertaining to the above Matter Under Review. The final enclosure was not mailed until January 4, 1995 and not received until today, January 9, 1995.

Because of the above, I am requesting a 15 day extension which will allow me the proper 15 day time period to review together all documents and enclosures and to respond.

As I may be away from my office, please contact me by fax transmission to 402-493-5100 as soon as my request has been approved.

Sincerely,

Daryl Ingalsbe
President

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

January 13, 1995

Daryl Ingalsbe, President
Independent Technologies of Omaha, Inc.
11422 Miracle Hills Drive, Suite 500
Omaha, NE 68154

RE: MUR 4164

Dear Mr. Ingalsbe:

This is in response to your letter dated January 9, 1995, requesting a 15-day extension to respond to the complaint filed in the above-noted matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on February 8, 1995.

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

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

9504369430 4

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JAN 17 1 09 PM '95

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

Dear Mr. Noble:

This letter is in response to your letter dated December 28, 1994 regarding MUR 4164. The Stoney for Senate Committee believes that no action needs to be taken regarding the complaint by the Nebraska Democratic Party.

The complaint is baseless in nature and void of any factual information. The Stoney for Senate Committee had no knowledge of or activity with the independent activities of Mr. Daryl Ingalsbe.

Furthermore the Stoney for Senate campaign had no involvement or contact with Mr. Ingalsbe regarding any of the materials or promotions that he created. The Stoney for Senate campaign had no coordination or gave any direction to Mr. Ingalsbe regarding his independent activities. The poster that Mr. Bataillon refers to was left at the Stoney headquarters by a volunteer.

If you have any further questions please contact me at 402-393-8333.

Sincerely,

Jan Stoney

Jan Stoney

8912 Farnam Court
Omaha Ne
68114

95043694305

JAMES S. MITCHELL
1500 WOODMEN TOWER
OMAHA, NEBRASKA 68102
TELEPHONE (402) 344-0500

January 24, 1995

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

Re: MUR 4164

Dear Mr. Noble:

This letter is in response to the letter from your office, dated December 28, 1994, which I received on January 19, 1995, regarding the above-referenced matter. Please find enclosed the Affidavit of James S. Mitchell which is in response to the complaint filed by the Nebraska Democratic Party.

If you have any further questions concerning this matter, please contact me at (402) 344-0500.

Sincerely yours

James S. Mitchell

JSM/em
Enclosure
116284

95043694306

FEDERAL ELECTION COMMISSION

RE: MUR 4164

12 46 PM '95
FEDERAL ELECTION COMMISSION OFFICE OF GENERAL COUNSEL

AFFIDAVIT OF JAMES S. MITCHELL

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

I, James S. Mitchell, the undersigned, upon first being duly sworn and under oath, state as follows:

1. Affiant is more than 21 years of age and has been a resident of Omaha, Douglas County, Nebraska, for approximately 20 years.

2. Affiant is an attorney and has been duly admitted to the practice of law since 1974. Affiant is licensed to practice before the Supreme Court of the State of Nebraska, United States District Court for the District of Nebraska, and the United States Court of Appeals, Eighth Circuit.

3. Affiant is a member of the law firm of Baird, Holm, McEachen, Pedersen, Hamann & Strasheim with his principal office at 1500 Woodmen Tower, Omaha, Nebraska 68102, (402) 344-0500.

4. In approximately March, 1994, Affiant commenced duties as treasurer of the Committee, serving in such office as an unpaid volunteer.

5. On January 19, 1995, Affiant received correspondence, dated December 28, 1994, from Mary L. Taksar, Attorney Central Enforcement District, Federal Election Commission ("FEC"), which correspondence was addressed to Affiant as treasurer of Stoney for U.S. Senate (the "Committee") and which

95043694307

correspondence advised that a complaint had been filed with the FEC against the Committee by the Chairman of the Nebraska Democratic Party. The correspondence further advised that the complaint had been docketed before the FEC as MUR 4164. Affiant has reviewed the correspondence and complaint enclosed therewith. This Affidavit is submitted in response to the complaint and with respect to MUR 4164.

6. Affiant has absolutely no knowledge regarding the activities of Daryl Ingalsbe relative to any billboard advertising during the 1994 general election or otherwise.

7. Affiant does not know Ingalsbe. Affiant has never met Ingalsbe. Affiant has never had any direct or indirect contact with Ingalsbe about any matter, whether related to his efforts to elect candidates or otherwise; nor has Affiant had any contact with any agent, authorized person or anyone else for or on behalf of Ingalsbe regarding Ingalsbe's advocacy efforts during the immediate past general election.

8. As treasurer of the Committee, Affiant has never been advised by any Committee officer, present or past, the candidate or anyone else for and on behalf of the Committee that Ingalsbe, or anyone on his behalf, was or had been engaged in any effort or was doing anything on behalf of the Committee related to billboard advertising.

9. Affiant, after receiving and reviewing the December 28, 1994, correspondence from the FEC and the copy of the complaint enclosed therewith, telephonically contacted Andy Abboud,

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former campaign manager for the Committee. Abboud advised Affiant that the first time he became aware of the billboard and advertising materials created by Ingalsbe was when a certain poster had been brought by a volunteer and hung on a wall at the Committee's headquarters. Abboud further advised Affiant that he had no knowledge whatsoever of Ingalsbe's efforts to create billboard advertising during the 1994 election cycle. Affiant believes Abboud's account of the matter to be true.

FURTHER, AFFIANT SAYETH NOT.

Dated this 24th day of January, 1995.

James S. Mitchell

SUBSCRIBED AND SWORN to before me, a notary public, on this 24th day of January, 1995.

GENERAL NOTARY-State of Nebraska
ELAINE A. MILLER
My Comm. Exp. May 25, 1995

Elaine A. Miller
Notary Public

116218

95043694309

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

FEB 3 10 20 AM '95

January 31, 1995

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

Dear Mr. Noble:

I am responding to MUR 4164.

I am aware of Federal Election Commission guidelines. In all cases the rules and regulations as stated in 11 CFR were followed to the letter and spirit of the law. In no instance did my contributions to any campaign exceed the $1,000 federal limit. My independent expenditure was filed with the commission and I verified receipt of the report with Beth Bernardo in your public disclosure office. I have enclosed a copy for your convenience (enclosure 1).

The complaint incorrectly states that the billboard message was directed solely at Bob Kerrey. In fact, the billboard was directed at Nebraska's Democrats. As the enclosed artwork shows, three puppets appear on the billboard rather than one as implied in the complaint. A fact purposely omitted in their complaint to create a falsehood and mislead your office. I have also enclosed a copy of the state of Nebraska filing for your information (enclosure 2).

The billboard idea was conceived by me in August of 1993 within a few days of the date that our Nebraska Democratic Senators and House member voted for the largest tax increase in history. Clearly a vote not supported by an overwhelming majority of Nebraska citizens. At that point in time, Jan Stoney had not even been mentioned as a political candidate and certainly had not declared for the U.S. Senate. As enclosure 3 illustrates, my first correspondence from the outdoor advertising agency was August 26, 1993.

The complaint alleges that I failed to comply with 11 CFR 109.1(b)(4) (i) (B). At no time did I share information or coordinate plans with the Stoney campaign, the Republican Party or any other campaign concerning my independent expenditure.

The allegations that my billboard campaign was coordinated with the Stoney campaign is ludicrous as my enclosure 3 clearly shows. Hundreds of the billboard posters like the one shown in the video were printed and given to friends and acquaintances prior to the billboard advertising which began September 25, 1994. Controlling where the posters ended up would have been impossible. The fact that one was posted in the Stoney campaign office and appeared in the background during a news interview is purely coincidental.

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Having made an independent expenditure does not preclude me from supporting political candidates within the guidelines of state and federal election law. I participated in many fund raisers to support numerous candidates for national, state and local offices. A fact also known by the complainant but not revealed to your office.

I submit that this complaint filed by the Nebraska Democratic Party on December 15, 1994 is a sham. It plagiarizes letter for letter and word for word the complaint filed by the Kerrey for Senate committee on October 27, 1994 (enclosure 4). The Kerrey Campaign failed to respond to your request to provide proper sworn documentation within the 15 day time constraint. At that point the file should have been closed as stated in your letter of November 8, 1994. Since they failed to meet your time frame, they are attempting to resurrect the complaint using the ruse of a filing by the Nebraska Democratic Party. Another reason why it should be disregarded in its entirety.

This complaint is merely an attempt by Senator Bob Kerrey and the Nebraska Democratic Party to use the Federal Election Commission as a tool for harassment of a citizen with opposing political views. I chose to exercise my first amendment right of freedom of speech. I paid for that expression with my own after tax dollars. I did not conspire or collude with anyone on this personal project. I complied fully with all election laws, both state and federal. Their complaint was made without any attempt to verify the facts. It is totally without merit and should be dropped without further waste of taxpayer dollars.

Sincerely,

Daryl Ingalsbe

Daryl E. Ingalsbe
RR2, Box PH6
Blair, Nebraska 68008

Enclosures

95043694311

REPORT OF INDEPENDENT EXPENDITURES AND CONTRIBUTIONS RECEIVED

(To Be Filed by a Person Other Than a Political Committee)

(See Instructions on Reverse Side)

Enc. 1

1. (a) Name: Daryl E. Ingalsbe	(c) Occupation: President
(b) Address: RR2, Box PH6	2. Identification Number: 508-64-1179
(d) City, State and ZIP Code: Blair, NE 68008	3. Is this Report an Amendment? ☐ YES ☒ NO
(e) Name of Employer: Independent Technologies, Inc.	

4. TYPE OF REPORT (check appropriate box(s)):

(a) ☐ April 15 Quarterly Report
☐ July 15 Quarterly Report
☒ October 15 Quarterly Report
☐ January 31 Year End Report
☐ July 31 Mid Year Report

☐ Twelfth Day Report preceding _____ election on _____ in the State of _____.
☐ Thirtieth Day Report following the General Election on _____ in the State of _____.

5. This Report covers the period — FROM: 7-1-94 THROUGH: 9-30-94

6. CONTRIBUTION(S) RECEIVED

Full Name, Mailing Address and ZIP Code of Contributor	Name of Employer	Occupation	Date (Month, Day, Year)	Amount
None				

7. EXPENDITURE(S) MADE

Full Name, Mailing Address and ZIP Code of Payee	Purpose of Expenditure	Date (Month, Day, Year)	Amount	Check One: Supports	Check One: Opposes	Name and Office Sought (District, State) of Federal Candidate
*See Attachment A					X	Bob Kerrey Senate - NE
					X	Peter Hoagland 2nd District - NE Congress

8. Total Contributions ..... $ 0

9. Total Expenditures ..... $ 9,000.39

Under penalty of perjury I certify that the independent expenditures reported herein were not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or agent or authorized committee of such candidate. Furthermore, these expenditures did not involve the financing of, the dissemination, distribution or republication, in whole or in part, of any campaign materials prepared by the candidate or an agent or authorized committee of the candidate.

Daryl E. Ingalsbe 10-14-94
SIGNATURE Date

Subscribed and sworn to before me this 14th day of October, 19 94

My Commission Expires: Oct. 25, 1995

Stacy D. Spencer
(Notary Public)

GENERAL NOTARY-State of Nebraska
STACY D. SPENCER
My Comm. Exp. Oct. 25, 1995

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this report to the penalties of 2 U.S.C. 437g.

For further information contact:
Federal Election Commission
Toll Free 800-424-9530

Any information reported herein may not be copied for sale or use by any person for the purpose of soliciting contributions or for any other commercial purpose except that the name and address of any political committee may be used to solicit contributions from such committee.

95043694312

ATTACHMENT A

REPORT OF INDEPENDENT EXPENDITURE

NAME AND ADDRESS OF PERSON TO WHOM EXPENDITURE WAS MADE:

1. DUDYCHA, INC.
   9140 West Dodge Road
   Suite 411
   Omaha, NE 68114

2. MID AMERICA COMPANY
   4311 South 90th Street
   Omaha, NE 68127

ITEM 4. DATE, AMOUNT AND DESCRIPTION OF NATURE OF EXPENDITURE:

(1) 9-26-94	$6,656.95	Billboard Advertising
(2) 9-29-94	$2,343.44	T-Shirt Advertising

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9 5 0 4 3 6 9 4 3 1 4

STOP
Clinton's Puppet Show

VOTE
Republican
For a Change

Paid for by Daryl Ingalsbe and not authorized by any candidate, committee or party.

NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION
11th Floor, State Capitol
P.O. Box 95086
Lincoln, Nebraska 68509
(402) 471-2522

BEFORE COMPLETING THIS FORM READ THE FILING REQUIREMENTS ON PAGE 2(a)

REPORT OF INDEPENDENT EXPENDITURE

NADC FORM B-6

POSTMARK DATE	
MICROFILM NUMBER	

OFFICE USE ONLY

- Any person, other than a committee, corporation, labor organization or industry, trade or professional association, who makes an independent expenditure exceeding $100 for the purpose of influencing the election or defeat of a candidate or the qualification passage or defeat of a ballot question must file this report.
- File with the Nebraska Accountability and Disclosure Commission and the county election official of the filer's residence within 10 days of making the expenditure.
- Persons who fail to file this report or otherwise do not comply with the reporting provisions of the law are subject to penalties.

DO NOT FILE THIS REPORT IF THE EXPENDITURE WAS A DIRECT CONTRIBUTION TO A COMMITTEE OR CANDIDATE

ITEM 1 NAME, ADDRESS AND PHONE NUMBER OF PERSON MAKING EXPENDITURE

Name Daryl E. Ingalsbe Telephone No. 402)426-5196

Address RR2, Box PH6 (STREET ADDRESS OR RURAL ROUTE) Blair (CITY) NE (STATE) 68008 (ZIP CODE)

ITEM 2 NAME OF CANDIDATE OR BALLOT QUESTION FOR WHICH EXPENDITURE WAS MADE AND DATE OF ELECTION

☒ Candidate – Office Sought Governor

☐ Ballot Question – Ballot Issue

DATE OF ELECTION: 11 (MONTH) 8 (DAY) 1994 (YEAR)

ITEM 3 NAME AND ADDRESS OF PERSON TO WHOM EXPENDITURE WAS MADE

If the person providing the consideration for which the expenditure was made is different from the payee (person receiving the money), also list the name and address of the person providing the consideration.

NAME	ADDRESS (Street & City)
See Attachment "A"	See Attachment "A"

ITEM 4 DATE, AMOUNT AND DESCRIPTION OF NATURE OF EXPENDITURE

If the expenditure consisted of goods, materials, services, or the provision of facilities of ascertainable monetary value, (in-kind expenditures) but not the payment of money, indicate the estimated monetary value in the "Amount" column.

DATE	AMOUNT	DESCRIPTION (e.g., radio, TV, newspaper)
		See Attachment "A"

ITEM 5	NAME, ADDRESS, OCCUPATION, EMPLOYER, AND PRINCIPAL PLACE OF BUSINESS OF EACH PERSON WHO CONTRIBUTED MORE THAN $100 TO THE EXPENDITURE

If only you contributed over $100 to the expenditure, write "filer" in the "Name" column and provide the other requested information in the remaining columns.

NAME	ADDRESS	OCCUPATION
Filer	RR2, Box PH6 Blair, NE 68008	Telecommunications Company President

PRINCIPAL PLACE OF BUSINESS	EMPLOYER
11422 Miracle Hills Drive Suite 500 Omaha, NE 68154	Independent Technologies, Inc.

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VERIFICATION

STATE OF NEBRASKA)
ss
COUNTY OF WASHINGTON)

I, Daryl E. Ingalsbe (Name of Person Making Expenditure), upon oath, state that to my knowledge the information contained in this report is true, correct and complete.

Daryl E. Ingalsbe (Signature)

Subscribed and sworn to before me this 30th day of September, 19 94.

(SEAL) GENERAL NOTARY-State of Nebraska STACY D. SPRINGER My Comm. Exp. Oct. 25, 1995

Stacy D. Springer (Notary Public)

NADC FORM B-6
July 1, 1985

ATTACHMENT A

REPORT OF INDEPENDENT EXPENDITURE

NAME AND ADDRESS OF PERSON TO WHOM EXPENDITURE WAS MADE:

1. DUDYCHA, INC.
   9140 West Dodge Road
   Suite 411
   Omaha, NE 68114

2. MID AMERICA COMPANY
   4311 South 90th Street
   Omaha, NE 68127

ITEM 4. DATE, AMOUNT AND DESCRIPTION OF NATURE OF EXPENDITURE:

(1) 9-26-94	$6,656.95	Billboard Advertising
(2) 9-29-94	$2,343.44	T-Shirt Advertising

95043694317

Enc. 3

PREPARED

ESPECIALLY

FOR: Daryl Ingralsbe

Independent Technologies

August 26, 1993

9504369431 8

[redacted]

Dear Daryl:

I want to thank you for allowing me the opportunity to provide you with information on the various options available to you on Outdoor Advertising.

Educators, in recent articles, make reference to "teachable moments". They defined teachable moments as the time when the message they deliver is readily accepted by the student. Example: When a student has a particular interest in the topic. Obviously, the advertising business is very similar. Ideally, the objective of a successful ad is to deliver the message precisely when the consumer wants/needs the product. A TOUGH PROPOSITION! Still, we do just that with Outdoor. Our daily continuity at our low daily cost reaches the consumers in there teachable moments.

As you have requested, I'm including information to introduce you to Outdoor Advertising. We basically have two different types of Outdoor Advertising: Paints and Posters, which come in two different sizes. Therefore the prices vary, making it easier to fit any budget you have.

Painted bulletins are available in two sizes, 10½'x36' and 14'x48'. Painted bulletins and their larger-than-life size helps maintain a long-term visibility and a day-in, day-out presence in the marketplace. Your message is handpainted by highly skilled artists. The use of eye-catching cut-outs or embellishments combined with bold and

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dynamic colors allow for a creative flexibility and recall of your message that only outdoor can provied. With a large physical appearance that creates its own excitement and impact, not to mention a superior cost per thousand, painted bulletins can stand on their own or be the perfect complement to other media. These painted bulletins rotate to a new high traffic location every 60 days to locations that you have approved in advance. I-80 is sold out for 1993, but we have locations for 1994, (see enclosed list). Indicated next to the location is the traffic count based on 18 hours, as all of our painted bulletins are illuminated till midnight. A traffic count of 26.5 translates to exposures of twenty-six thousand five hundred.

Costs	1 Month Rate	4 Month Rate	12 Month Rate
14'x48'	$2150 per month	$1850 per month	$1700 per month
10½'x36'	$1400 per month	$1270 per month	$1060 per month

These are your total costs and include everything needed to get your message up. If embellishments are used, the cost is $20.00 sq. ft. and this would be a one-time cost.

The other option for you to consider is poster panels (6'x12') and 30-sheet panels (12'x25'). Posters are utilized by advertisers to provide immediate market saturation of their message. They generate fast complete coverage of the market and are excellent to use in competitive situations where high frequency is desired. Long-term poster campaigns create excellent brand identification and name recognition.

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Posters can also be effecitve for short-term or seasonal campaigns and new product/service introduction. Because a typical showing is posted at one time, there is an immediate build-up of awareness. A "showing" is a specific number of panels used to deliver impressions equal to a % of the population. For example, a #50 Showing (or 50 GRPs) delivers gross impressions equal to 50% of the total population of the metro market on a daily basis. A #50 Showing consists of 27 12'x25' billboards and quarantees the following statistics for a one month (30 days) time period. (Representative locations list enclosed)

Category	Market Total	Reach	%	Frequency
Adults 18+	419,000	340,000	81.1	17.5x
Women	221,000	181,000	82.1	15.4x
Men	198,000	158,000	80.0	19.9x
Adults 18-34	185,000	158,000	85.2	20.5x
Adults 35-49	100,000	82,000	82.2	17.1x
Adults 50+	133,000	99,000	74.5	13.1x

I have included a marketmath which gives you specific demographic breakdown on all of the 30 sheet (12'x25') showings we offer and it also has the reach and frequency of each showing.

The rate cards enclosed list the costs for the showings for the 30 sheets, paints and junior panels (6'x12'). These are space costs only and the poster showings require a one-time production charge. Production or paper is required on poster

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showings and the cost varies depending on the number of colors used and quanity. I can give you an exact quote on production costs once we have artwork.

To quickly summarize this proposal, I would again recommend Outdoor Advertising for the following reasons:

1. Target market coverage
2. Day-in, Day-out visibility
3. High reach and frequency
4. Low Cost

Once again, I want to thank you for your consideration fo Outdoor Advertising. If you have any questions at all please don't hesitate to give me a call.

I would be more than happy to put together a plan to fit your needs and budget.

Sincerely,

Rod

Rod Kestel
Sales Manager

RK:al

Enclosure

9504369432 2

IMPERIAL
OUTDOOR ADVERTISING

14'x48' I-80 1994 Locations

1.	I-80 @ 24th	NSFE	39.9	Open all of 94
2.	I-80 @ 34th	SSFE	67.2	Open Jan-May, Aug on
		FW	67.2	Open Mar, Apr Oct on
3.	I-80 @ 37th	SSFE	67.2	Open all of 94
4.	I-80 @ 60th	NSFW	85.8	Jan, June-Aug
5.	I-80 @ 69th	NSFE	85.8	Jan, Feb, July, Aug

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ENC. 4

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 8, 1994

Paul Johnson, Campaign Manager
Kerrey for Senate Campaign
2819 So. 125th Avenue, Suite 357
Omaha, NE 68144

Dear Mr. Johnson:

This is to acknowledge receipt on November 1, 1994, of your letter dated October 27, 1994. The Federal Election Campaign Act of 1971, as amended ("the Act") and Commission Regulations require that the contents of a complaint meet certain specific requirements. One of these requirements is that a complaint be sworn to and signed in the presence of a notary public and notarized. Your letter did not contain a notarization on your signature and was not properly sworn to. We note that the exhibits mentioned in your letter were not enclosed.

In order to file a legally sufficient complaint, you must swear before a notary that the contents of your complaint are true to the best of your knowledge and the notary must represent as part of the jurat that such swearing occurred. The preferred form is "Subscribed and sworn to before me on this _____ day of _____, 19__." A statement by the notary that the complaint was sworn to and subscribed before him/her also will be sufficient. We regret the inconvenience that these requirements may cause you, but we are not statutorily empowered to proceed with the handling of a compliance action unless all the statutory requirements are fulfilled. See 2 U.S.C. § 437g.

Enclosed is a Commission brochure entitled "Filing a Complaint." I hope this material will be helpful to you should you wish to file a legally sufficient complaint with the Commission.

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Please note that this matter will remain confidential for a 15 day period to allow you to correct the defects in your complaint. If the complaint is corrected and refiled within the 15 day period, the respondents will be so informed and provided a copy of the corrected complaint. The respondents will then have an additional 15 days to respond to the complaint on the merits. If the complaint is not corrected, the file will be closed and no additional notification will be provided to the respondents.

If you have any questions concerning this matter, please contact me at (202) 219-3410.

Sincerely,

Retha Dixon

Retha Dixon
Docket Chief

Enclosure

cc: Daryl Ingalsbe
Jan Stoney
Stoney for Senate
Independent Technologies, Inc.

95013694325

Bob Kerrey
FOR UNITED STATES SENATE
2819 So. 125th Avenue • Suite 357 • Omaha, Nebraska 68144
Telephone (402) 334-3331 • Fax (402) 334-3336

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL COUNSEL
Nov 1 11 40 AM '94

October 27, 1994

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

Dear Mr. Noble:

Kerrey for Senate Campaign files this complaint, alleging substantial and willful violations of federal law by Mr. Daryl Ingalsbe, Jan Stoney and the Stoney for Senate Committee. They are colluding in a scheme to draw on Mr. Ingalsbe's considerable personal wealth for the benefit of Mrs. Stoney's candidacy. As a result, Mr. Ingalsbe is spending monies well outside the limits of federal law to support Mrs. Stoney, and neither he nor the Stoney campaign is making any public disclosure at all of their activities.

9 5 0 4 3 6 9 4 3 2 6

Introduction

The ruse employed by the Respondents is simple. Mr. Ingalsbe is claiming to make "independent expenditure" on behalf of Mrs. Stoney and against the candidacy of her opponent, Senator Bob Kerrey. So far, the known "independent expenditures" have appeared in the form of billboard advertising against Kerrey's re-election to the Senate. A photograph of one such ad is enclosed with this Exhibit as Exhibit "A". The billboard asks that the public "stop Clinton's Puppet Show" and depicts President Clinton manipulating in marionette style a cartoon representation of Senator Kerrey. The ad does not hide its election-influencing purpose, closing at the bottom with "Vote Republican for a Change."

The billboard declares that Mr. Ingalsbe has financed the ad "independently," without the authorization of any candidate, from personal funds. If truly "independent" within the meaning of federal law, Mr. Ingalsbe could make unlimited expenditures for Stoney against Kerrey. If not "independent," Mr. Ingalsbe would be bound like all other contributors by the contribution limitations of federal law -- only $1,000 per election per candidate. In both cases, federal law require public disclosure of this spending.

Sham "Independence" of Ingalsbe

Mr. Ingalsbe is not "independent," however, and his spending is subject to limits that he and the Stoney campaign are willfully ignoring. "Independence" means that an expenditure has been made by

Paid for by Kerrey for Senate
Contributions are not tax deductible

279-C

an individual without the involvement in the campaign he or she is supporting. But Mr. Ingalsbe has been fully involved in the Stoney campaign: in raising funds for that campaign, introducing the candidate to potential supporters and donors, and even consulting with the Stoney campaign on the themes and designs used for this sham "billboard advertising."

(1) Ingalsbe Involvement in the Stoney Campaign

The evidence is clear and beyond dispute. First, Mr. Ingalsbe, the President of Independent Technologies of Omaha, has hosted Mrs. Stoney at a fundraising and meet-and-greet event at his corporate offices. A copy of the invitation or flyer announcing the event is attached as Exhibit "B". The event is stated in clear terms to be a "fundraiser," but also an "opportunity to meet with Jan Stoney." The overall stated purpose of the event is "to send Bob Kerrey back to the restaurant business!"

This does not appear to be the only occasion when Mr. Ingalsbe has hosted an event for Mrs. Stoney. One month before the announced date of the "fundraiser" with Stoney, the Omaha World-Herald reported on another event at the offices of Independent Technologies, with Mr. Ingalsbe present, where "[D]onations were being taken to promote Kerrey's Republican challenger, Jan Stoney." Exhibit "C".

The regulations of the Commission state in clear terms that an expenditure cannot be "independent" if made "through any person who is, or has been, authorized to raise or expend funds" for the candidate. 11 C.F.R. § 109.1(b)(4)(i)(B). Mr. Ingalsbe has made no secret of his fundraising for Mrs. Stoney, having hosted widely advertised events for Mrs. Stoney in his own office and, on at least one occasion, with Mrs. Stoney present. So having raised money for the candidate, the regulations bar him from pretending now to be "independent" from her.

(2) Communication Between Ingalsbe and Stoney Campaign About Billboard Advertising

Nor did the idea for the billboard spring full-blown from the mind of Mr. Ingalsbe. Exhibit "D" is a tape of a newscast featuring comments by the Stoney campaign manager. Over his shoulder, taped to the wall of his office, is visible the same "Stop Clinton's Puppet Show" artwork appearing in the Ingalsbe billboard. So it is apparent that either Mr. Ingalsbe drew the inspiration directly from the Stoney campaign -- or the Stoney campaign was actively informed by him of his plans. In either case, this communication and cooperation around the preparation of the billboard gives the lie to any pretension that this Ingalsbe expenditure is "independent."

The Commission regulations will not permit "independence" in these circumstances. The regulations state that "independence" does not, of course exist where there has been any "arrangement,

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coordination or direction by the candidate or his or her agent prior to the ... display ... of the communication." 11 C.F.R. § 109.1(b)(4)(i). In light of the taped evidence that the design for the billboard was posted on the walls of the Stoney campaign manager, it is obvious that there took place bald-faced and illegal collusion between the Stoney campaign and Mr. Ingalsbe in connection with the billboard campaign.

Ingalsbe Failure to Report

Mr. Ingalsbe forgot, in any event, that an effective falsehood requires some attention to detail. An independent expenditure, such as the one he claims falsely to have made, is reportable to the Federal Election Commission. Mr. Ingalsbe, however, has not filed any such report. So even in the realm of "independence" he claims to have operated in, he broke the law.[1]

Conclusion

The contribution limits of federal law are designed precisely to guard against the use of individual wealth without limits to influence the outcome of federal elections. Stoney and Ingalsbe imagine that they have found a way around the law. The evidence shows that they have not, and the law should be enforced vigorously against Ingalsbe, Stoney and those, such as her campaign manager, actively involved in this scheme.

Because of the seriousness of this violation, including the apparent attempt to willfully deceive about the true collaborative nature of these expenditures, the Commission should conduct this investigation under the "knowing and willful" provisions of the statute. 2 U.S.C. § 436g(a)(5)(B), (C).

Very Truly Yours,

Paul Johnson

Paul Johnson, Campaign Manager
Kerrey for Senate Campaign

---

[1] Mr. Ingalsbe cannot claim that the advertisement was somewhat a "generic" advertisement seeking only votes for Republican candidates across the board. The ad depicts Senator Kerrey -- the puppet in "Clinton's Puppet Show" -- and asks that the show be "stopped" by a vote for Republicans. Under the federal law, an independent expenditure includes precisely such an expenditure "expressly advocating the election or defeat of a clearly identified candidate." 2 U.S.C. § 431(17). Under the statute, a "clearly identified candidate" includes not only candidates specifically named, but also any candidate "whose identity is apparent from unambiguous reference." 2 U.S.C. § 431(18)(C). The reference to Kerrey -- depicted in cartoon fashion -- constitutes identification by "unambiguous reference." So the billboard is without question an independent expenditure seeking the defeat of Bob Kerrey, except that, as shown here, the requisite "independence" is lacking and the billboard was illegally financed in collusion with the Stoney campaign.

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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

OCT 2 10 52 AM '95

In the Matter of) Enforcement Priority
)
)

GENERAL COUNSEL'S REPORT

SENSITIVE

I. INTRODUCTION

This report is the General Counsel's Report to recommend that the Commission no longer pursue the identified lower priority and stale cases under the Enforcement Priority System.

II. CASES RECOMMENDED FOR CLOSING

A. Cases Not Warranting Further Pursuit Relative to Other Cases Pending Before the Commission

A critical component of the Priority System is identifying those pending cases that do not warrant the further expenditure of resources. Each incoming matter is evaluated using Commission-approved criteria and cases that, based on their rating, do not warrant pursuit relative to other pending cases are placed in this category. By closing such cases, the Commission is able to use its limited resources to focus on more important cases.

Having evaluated incoming matters, this Office has identified 34 cases which do not warrant further pursuit relative to the other pending cases.[1] A short description of

1. These matters are: PM 309 (Attachment 1); RAD 95L-12 (Attachment 2); MUR 4118 (Attachment 3); MUR 4119 (Attachment 4); MUR 4120 (Attachment 5); MUR 4122 (Attachment 6); MUR 4123 (Attachment 7); MUR 4124 (Attachment 8); MUR 4125 (Attachment 9); MUR 4126 (Attachment 10); MUR 4130 (Attachment 11); MUR 4133 (Attachment 12); MUR 4134 (Attachment 13); MUR 4135 (Attachment 14); MUR 4136 (Attachment 15); MUR 4137

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each case and the factors leading to assignment of a relatively low priority and consequent recommendation not to pursue each case is attached to this report. See Attachments 1-34. As the Commission requested, this Office has attached the responses to the complaints for the externally-generated matters and the referral for the matter referred by the Reports Analysis Division because this information was not previously circulated to the Commission. See Attachments 1-34.

B. Stale Cases

Investigations are severely impeded and require relatively more resources when the activity and evidence are old. Consequently, the Office of General Counsel recommends that the Commission focus its efforts on cases involving more recent activity. Such efforts will also generate more impact on the current electoral process and are a more efficient allocation of our limited resources. To this end, this Office has identified 11 cases that

do not

(Footnote 1 continued from previous page)
(Attachment 16); MUR 4138 (Attachment 17); MUR 4140
(Attachment 18); MUR 4142 (Attachment 19); MUR 4143
(Attachment 20); MUR 4144 (Attachment 21); MUR 4145
(Attachment 22); MUR 4148 (Attachment 23); MUR 4149
(Attachment 24); MUR 4153 (Attachment 25); MUR 4155
(Attachment 26); MUR 4158 (Attachment 27); MUR 4163
(Attachment 28); MUR 4164 (Attachment 29); MUR 4169
(Attachment 30); MUR 4179 (Attachment 31); MUR 4195
(Attachment 32); MUR 4196 (Attachment 33); and MUR 4205
(Attachment 34).

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warrant further investment of significant Commission resources.[2] Since the recommendation not to pursue the identified cases is based on staleness, this Office has not prepared separate narratives for these cases. As the Commission requested, in matters in which the Commission has made no findings, the responses to the complaints for the externally-generated matters and the referrals for the internally-generated matters are attached to the report because this information was not previously circulated to the Commission. See Attachments 35-45. For cases in which the Commission has already made findings and for which each Commissioner's office has an existing file, this Office has attached the most recent General Counsel's Report.

This Office recommends that the Commission exercise its prosecutorial discretion and no longer pursue the cases listed below effective October 16, 1995. By closing the cases effective October 16, 1995, CED and the Legal Review Team will respectively have the additional time necessary for preparing the closing letters and the case files for the public record.

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2. These matters are: PM 250 (Attachment 35); PM 272 (Attachment 36); MUR 3188 (Attachment 37); MUR 3554 (Attachment 38); MUR 3623 (Attachment 39); MUR 3988 (Attachment 40); MUR 3996 (Attachment 41); MUR 4001 (Attachment 42); MUR 4007 (Attachment 43); MUR 4007 (Attachment 43); MUR 4008 (Attachment 44); and MUR 4018 (Attachment 45).

III. RECOMMENDATIONS

A. Decline to open a MUR and close the file effective October 16, 1995 in the following matters:

1) PM 309
2) RAD 95L-12
3) PM 250
4) PM 272

B. Take no action, close the file effective October 16, 1995, and approve the appropriate letter in the following matters:

1) MUR 3554
2) MUR 3623
3) MUR 3988
4) MUR 3996
5) MUR 4001
6) MUR 4007
7) MUR 4008
8) MUR 4018
9) MUR 4118
10) MUR 4119
11) MUR 4120
12) MUR 4122
13) MUR 4123
14) MUR 4124
15) MUR 4125
16) MUR 4126
17) MUR 4130
18) MUR 4133
19) MUR 4134
20) MUR 4135
21) MUR 4136
22) MUR 4137
23) MUR 4138
24) MUR 4140
25) MUR 4142
26) MUR 4143
27) MUR 4144
28) MUR 4145
29) MUR 4148
30) MUR 4149

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31) MUR 4153
32) MUR 4155
33) MUR 4158
34) MUR 4163
35) MUR 4164
36) MUR 4169
37) MUR 4179
38) MUR 4195
39) MUR 4196
40) MUR 4205

C. Take no further action, close the file effective October 16, 1995 and approve the appropriate letter in MUR 3188.

9/29/95
Date

Lawrence M. Noble
General Counsel

95043694333

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	Agenda Document #X95-85
Enforcement Priority	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on October 17, 1995, do hereby certify that the Commission decided by votes of 5-0 to take the following actions:

A. Decline to open a MUR and close the file effective October 17, 1995 in the following matters:

1) PM 309
2) RAD 95L-12
3) PM 250
4) PM 272

B. Take no action, close the file effective October 17, 1995, and approve the appropriate letter in the following matters:

1) MUR 3554
2) MUR 3623
3) MUR 3988
4) MUR 3996
5) MUR 4001
6) MUR 4007
7) MUR 4008
8) MUR 4018
9) MUR 4118

(continued)

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10) MUR 4119
11) MUR 4120
12) MUR 4122
13) MUR 4123
14) MUR 4124
15) MUR 4125
16) MUR 4126
17) MUR 4130
18) MUR 4133
19) MUR 4134
20) MUR 4135
21) MUR 4136
22) MUR 4137
23) MUR 4138
24) MUR 4140
25) MUR 4142
26) MUR 4143
27) MUR 4144
28) MUR 4145
29) MUR 4148
30) MUR 4149
31) MUR 4153
32) MUR 4155
33) MUR 4158
34) MUR 4163
35) MUR 4164
36) MUR 4169
37) MUR 4179
38) MUR 4195
39) MUR 4196
40) MUR 4205

C. Take no further action, close the file effective October 17, 1995 and approve the appropriate letter in MUR 3188.

(continued)

9 5 0 4 3 6 9 4 3 3 5

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for each of the decisions; Commissioner Potter was not present.

Attest:

10-20-95
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 23, 1995

Joe Batiallon, Chairman
Nebraska Democratic Party
715 S. 14th Street
Lincoln, NE 68508

RE: MUR 4164

Dear Mr. Batiallon:

On December 22, 1994, the Federal Election Commission received your complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the respondent(s). See attached narrative. Accordingly, the Commission closed its file in this matter on October 17, 1995. This matter will become part of the public record within 30 days.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Mary L. Taksar

Mary L. Taksar
Attorney

Attachment
Narrative

95043694337

MUR 4164
STONEY FOR SENATE COMMITTEE

The Nebraska Democratic Party filed a complaint alleging that Daryl Ingalsbe, Jan Stoney, and the Stoney for Senate Committee were involved in a scheme to enable Mr. Ingalsbe to spend money outside the FECA limits by disguising the expenditures as independent expenditures. The complaint states that neither Mr. Ingalsbe nor the Stoney Committee reported the expenditures. Specifically, the complaint alleges that the expenditures made by Mr. Ingalsbe for a billboard advertisement in opposition to Senator Bob Kerrey, Ms. Stoney's opponent, were not independent because he consulted with the campaign on themes and designs for the billboard advertisement.

In response to the complaint, Mr. Ingalsbe states that the billboard advertisement in question was not directed solely at Senator Bob Kerrey but at all Nebraska Democrats. Mr. Ingalsbe states that the advertisement was conceived by him after Congress voted for the largest tax increase in history. Mr. Ingalsbe states that at that time, Jan Stoney had neither been mentioned as a candidate nor declared her candidacy. According to Mr. Ingalsbe, he did not share information or coordinate information with the Stoney Committee, the Republican Party, or any other committee. Mr. Ingalsbe also indicated that he filed a report of independent expenditures and verified receipt of the report with a staff member in the FEC Public Disclosure Division. The Stoney Committee states that the Committee had no involvement with Mr. Ingalsbe regarding his independent activities.

This matter is less significant relative to other matters pending before the Commission.

95043694338

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 23, 1995

James S. Mitchell, Treasurer
Stoney for U.S. Senate
8912 Farnam Court
Omaha, NE 68144

RE: MUR 4164

Dear Mr. Mitchell:

On December 28, 1994, the Federal Election Commission notified you of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against Stoney for U.S. Senate and you, as treasurer. See attached narrative. Accordingly, the Commission closed its file in this matter on October 17, 1995.

The confidentiality provisions of 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 prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

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

Sincerely,

Mary L. Taksar

Mary L. Taksar
Attorney

Attachment
Narrative

9504389439

MUR 4164
STONEY FOR SENATE COMMITTEE

The Nebraska Democratic Party filed a complaint alleging that Daryl Ingalsbe, Jan Stoney, and the Stoney for Senate Committee were involved in a scheme to enable Mr. Ingalsbe to spend money outside the FECA limits by disguising the expenditures as independent expenditures. The complaint states that neither Mr. Ingalsbe nor the Stoney Committee reported the expenditures. Specifically, the complaint alleges that the expenditures made by Mr. Ingalsbe for a billboard advertisement in opposition to Senator Bob Kerrey, Ms. Stoney's opponent, were not independent because he consulted with the campaign on themes and designs for the billboard advertisement.

In response to the complaint, Mr. Ingalsbe states that the billboard advertisement in question was not directed solely at Senator Bob Kerrey but at all Nebraska Democrats. Mr. Ingalsbe states that the advertisement was conceived by him after Congress voted for the largest tax increase in history. Mr. Ingalsbe states that at that time, Jan Stoney had neither been mentioned as a candidate nor declared her candidacy. According to Mr. Ingalsbe, he did not share information or coordinate information with the Stoney Committee, the Republican Party, or any other committee. Mr. Ingalsbe also indicated that he filed a report of independent expenditures and verified receipt of the report with a staff member in the FEC Public Disclosure Division. The Stoney Committee states that the Committee had no involvement with Mr. Ingalsbe regarding his independent activities.

This matter is less significant relative to other matters pending before the Commission.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 23, 1995

Janice D. Stoney
8912 Farnam Court
Omaha, NE 68114

RE: MUR 4164

Dear Ms. Stoney:

On December 28, 1994, the Federal Election Commission notified you of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against you. See attached narrative. Accordingly, the Commission closed its file in this matter on October 17, 1995.

The confidentiality provisions of 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 prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

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

Sincerely,

Mary L. Taksar

Mary L. Taksar
Attorney

Attachment
Narrative

95043694341

MUR 4164
STONEY FOR SENATE COMMITTEE

The Nebraska Democratic Party filed a complaint alleging that Daryl Ingalsbe, Jan Stoney, and the Stoney for Senate Committee were involved in a scheme to enable Mr. Ingalsbe to spend money outside the FECA limits by disguising the expenditures as independent expenditures. The complaint states that neither Mr. Ingalsbe nor the Stoney Committee reported the expenditures. Specifically, the complaint alleges that the expenditures made by Mr. Ingalsbe for a billboard advertisement in opposition to Senator Bob Kerrey, Ms. Stoney's opponent, were not independent because he consulted with the campaign on themes and designs for the billboard advertisement.

In response to the complaint, Mr. Ingalsbe states that the billboard advertisement in question was not directed solely at Senator Bob Kerrey but at all Nebraska Democrats. Mr. Ingalsbe states that the advertisement was conceived by him after Congress voted for the largest tax increase in history. Mr. Ingalsbe states that at that time, Jan Stoney had neither been mentioned as a candidate nor declared her candidacy. According to Mr. Ingalsbe, he did not share information or coordinate information with the Stoney Committee, the Republican Party, or any other committee. Mr. Ingalsbe also indicated that he filed a report of independent expenditures and verified receipt of the report with a staff member in the FEC Public Disclosure Division. The Stoney Committee states that the Committee had no involvement with Mr. Ingalsbe regarding his independent activities.

This matter is less significant relative to other matters pending before the Commission.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 23, 1995

Timothy O'Dell, Registered Agent
Independent Technologies of Omaha, Inc.
11422 Miracle Hills Drive, Suite 500
Omaha, NE 68154

RE: MUR 4164

Dear Mr. O'Dell:

On December 28, 1994, the Federal Election Commission notified you of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against Independent Technologies of Omaha, Inc.. See attached narrative. Accordingly, the Commission closed its file in this matter on October 17, 1995.

The confidentiality provisions of 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 prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

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

Sincerely,

Mary L. Taksar

Mary L. Taksar
Attorney

Attachment
Narrative

9504369343

MUR 4164
STONEY FOR SENATE COMMITTEE

The Nebraska Democratic Party filed a complaint alleging that Daryl Ingalsbe, Jan Stoney, and the Stoney for Senate Committee were involved in a scheme to enable Mr. Ingalsbe to spend money outside the FECA limits by disguising the expenditures as independent expenditures. The complaint states that neither Mr. Ingalsbe nor the Stoney Committee reported the expenditures. Specifically, the complaint alleges that the expenditures made by Mr. Ingalsbe for a billboard advertisement in opposition to Senator Bob Kerrey, Ms. Stoney's opponent, were not independent because he consulted with the campaign on themes and designs for the billboard advertisement.

In response to the complaint, Mr. Ingalsbe states that the billboard advertisement in question was not directed solely at Senator Bob Kerrey but at all Nebraska Democrats. Mr. Ingalsbe states that the advertisement was conceived by him after Congress voted for the largest tax increase in history. Mr. Ingalsbe states that at that time, Jan Stoney had neither been mentioned as a candidate nor declared her candidacy. According to Mr. Ingalsbe, he did not share information or coordinate information with the Stoney Committee, the Republican Party, or any other committee. Mr. Ingalsbe also indicated that he filed a report of independent expenditures and verified receipt of the report with a staff member in the FEC Public Disclosure Division. The Stoney Committee states that the Committee had no involvement with Mr. Ingalsbe regarding his independent activities.

This matter is less significant relative to other matters pending before the Commission.

9504369434

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 23, 1995

Daryl Ingalsbe, President
Independent Technologies of Omaha, Inc.
11422 Miracle Hills Drive, Suite 500
Omaha, NE 68154

RE: MUR 4164

Dear Mr. Ingalsbe:

On December 28, 1994, the Federal Election Commission notified you of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against you. See attached narrative. Accordingly, the Commission closed its file in this matter on October 17, 1995.

The confidentiality provisions of 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 prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

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

Sincerely,

Mary L. Taksar

Mary L. Taksar
Attorney

Attachment
Narrative

95043694345

MUR 4164
STONEY FOR SENATE COMMITTEE

The Nebraska Democratic Party filed a complaint alleging that Daryl Ingalsbe, Jan Stoney, and the Stoney for Senate Committee were involved in a scheme to enable Mr. Ingalsbe to spend money outside the FECA limits by disguising the expenditures as independent expenditures. The complaint states that neither Mr. Ingalsbe nor the Stoney Committee reported the expenditures. Specifically, the complaint alleges that the expenditures made by Mr. Ingalsbe for a billboard advertisement in opposition to Senator Bob Kerrey, Ms. Stoney's opponent, were not independent because he consulted with the campaign on themes and designs for the billboard advertisement.

In response to the complaint, Mr. Ingalsbe states that the billboard advertisement in question was not directed solely at Senator Bob Kerrey but at all Nebraska Democrats. Mr. Ingalsbe states that the advertisement was conceived by him after Congress voted for the largest tax increase in history. Mr. Ingalsbe states that at that time, Jan Stoney had neither been mentioned as a candidate nor declared her candidacy. According to Mr. Ingalsbe, he did not share information or coordinate information with the Stoney Committee, the Republican Party, or any other committee. Mr. Ingalsbe also indicated that he filed a report of independent expenditures and verified receipt of the report with a staff member in the FEC Public Disclosure Division. The Stoney Committee states that the Committee had no involvement with Mr. Ingalsbe regarding his independent activities.

This matter is less significant relative to other matters pending before the Commission.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

THIS IS THE END OF MUR # 4164

DATE FILMED 11/9/95 CAMERA NO. 2

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