FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4355

DATE FILMED 3/11/98 CAMERA NO. 2

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BEFORE THE
FEDERAL ELECTION COMMISSION

THE CENTER FOR RESPONSIVE POLITICS, 1320 19th Street, NW Suite 700 Washington, D.C. 20036 (202) 857-0044 Complainant, v. Aqua-Leisure Industries, Inc. Respondent.	))))))))))	MUR 4355 **COMPLAINT**

RECEIVED FEDERAL ELECTION COMMISSION OFFICE OF GENERAL COUNSEL
MAY 7 10 22 AM '96

COMPLAINT OF THE CENTER FOR RESPONSIVE POLITICS

1. This complaint charges that respondent Aqua-Leisure Industries ("Aqua-Leisure") made contributions in the name of another and contributions of corporate funds in connection with an election to federal office in violation of the Federal Election Campaign Act, 2 U.S.C. §431 et seq., as amended ("FECA").

PARTIES

2. Complainant Center for Responsive Politics ("Center") is a nonprofit, nonpartisan research organization incorporated in the State of Iowa and headquartered in Washington, D.C. that studies the role that money plays in federal elections. Founded in 1983, the Center was designed to study Congress and examine potential reforms that could improve both its internal operation and its responsiveness to the American public.

3. Respondent Aqua-Leisure is a business corporation headquartered in Massachusetts engaged in the sporting goods business.

APPLICABLE STATUTES AND REGULATIONS

4. The FECA prohibits any corporation whatever to make a contribution or expenditure in connection with, *inter alia*, any primary election or political convention or caucus held to select candidates for the

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office of president. 2 U.S.C. §441b(a); 11 C.F.R. §114.2.

5. 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; 11 C.F.R. §110.4(b).

6. The term "contribution" includes any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value to any candidate, campaign committee, or political party or organization, in connection with any election for, *inter alia,* any primary election or political convention or caucus held to select candidates for the office of president. 2 U.S.C. §441b(b)(2); 11 C.F.R. §114.1.

GROUNDS FOR COMPLAINT

7. Senator Robert Dole is a candidate for the office of president of the United States.

8. According to FEC records, Aqua-Leisure employees and their families contributed at least $36,000 to Dole's presidential campaign committee and compliance committee between February and September, 1995. At least 13 individual contributors were employees or executives at Aqua-Leisure, and at least 10 individual contributors were family members of Aqua-Leisure employees or executives. Attached as Exhibit 1 is a list of individual contributions from Aqua-Leisure employees and their families, as well as the date and amount of each contribution, and the FEC Microfilm location.

9. According to FEC records, at least 10 contributions totaling $10,000 were made by Aqua-Leisure employees or their family members on February 28, 1995; at least 8 contributions totaling $8,000 were made by Aqua-Leisure employees or their family members on June 28-29; at least 5 contributions totaling $5,000 were made by Aqua-Leisure employees or their family members on July 20, 1995; and at least 8 contributions totaling $8,000 were made by Aqua-Leisure employees or their family members on August 8, 1995. Exhibit 1.

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10. According to a report by The Kansas City Star some Aqua-Leisure employees were "handed stacks of $100 bills and told to return with personal checks made out to 'Dole for President.'" *See, Ill-gotten Gains? Workers Say They Were Reimbursed for Dole Donations,* The Kansas City Star, Apr. 21, 1996, at A1. ("April 21 Report") (Attached as Exhibit 2).

11. According to the April 21 Report, three Aqua-Leisure employees received $4,000 in cash from Carol Nichols, the executive assistant to Simon Fireman who isthe chairman of Aqua-Leisure, and is a national vice chairman of finance for the Dole campaign. Nichols asked that they and their relatives contribute to the Dole campaign. Exhibit 2.

12. According to an April 22, 1996 report by The Kansas City Star, a fourth Aqua-Leisure employee claims to have received ten $100 bills in exchange for a $1,000 check given to Dole's campaign. *See, Dole Calls for Investigation Another Worker Says She Was Reimbursed for Campaign Donation,* The Kansas City Star, Apr. 22, 1996, at A1. (Attached as Exhibit 3).

13. According to the April 21 Report, one Aqua-Leisure employee reported being "called into (Nichols') office, by her, and she was sitting there with a stack of $100 bills that had to be one or two inches high...She peeled off twenty $100 bills and put them in an envelope. She said, 'You can write a personal check.'" The employee reported that after depositing the money in his or her checking account, the employee and a relative each wrote $1,000 checks to the Dole campaign. According to the April 21 the employee explained his or her actions by saying, "Jobs aren't that plentiful. So I was not in a position to say, 'To hell with you, I'm leaving.' I basically had to conform." Exhibit 2.

14. According to the April 21 Report, another Aqua-Leisure employee reported that Nichols "said, 'I'm going to give you this money; deposit it in your account and write a check out to the Dole campaign.'" The contributor reported that he or she "did specifically ask if I was the only one, and [Nichols] said no." Exhibit 2.

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15. Upon information and belief, Respondent Aqua-Leisure made contributions in the name of another person or persons and made contributions of corporate funds to presidential candidate Bob Dole in connection with his election to federal office, in violation of the applicable provisions of the FECA.

RELIEF

16. The Center respectfully urges the Commission to conduct a prompt and thorough investigation into the allegations in this Complaint, and of all related instances of violations of the FECA by Respondent Aqua-Leisure and its officers and directors, and to declare that the Respondent has violated the FECA, and to impose penalties for each violation. Finally, the Center urges the Commission to investigate whether the violations described above were knowing and willful so as to mandate enhanced penalties.

Respectfully submitted,

Ellen S. Miller
Executive Director
CENTER FOR RESPONSIVE POLITICS
1320 19th Street, NW
Washington, D.C. 20036
(202) 857-0044

Dated: May 6, 1996

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VERIFICATION

The undersigned complainant, on behalf of the Center for Responsive Politics, swears that the statements in this Complaint are based on the sources indicated, and, as such, are true and correct to the best of her information and belief.

Ellen S. Miller

Ellen S. Miller

District of Columbia)
) ss

Subscribed and sworn to before me this 6th day of May, 1996

Notary Public

My Commission Expires May 1, 1998

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<u>Exhibit One</u>

Selected Individual Contributions to the Dole Campaign
From Aqua-Leisure Employees and Their Families

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Selected Individual Contributions ($200+), 1/95 - 12/95

Contrib	Occupation	City	Date	Microfilm	Amount
BARON, BEVERLY	AQUA LEISURE INC	BROCKTON, MA 02402	07/20/95	95030011979	$1,000
BARON, JACOB	CARE NURSING ASSOC INC	BROCKTON, MA 02402	07/20/95	95030011979	$1,000
BERENSON, STEVEN MR	AQUA LEISURE IND	SHARON, MA 02067	08/08/95	95030014636	$1,000
BERENSON, STEVEN		SHARON, MA 02067	02/28/95	95039724030	$1,000
BLOCK, GAYLE M	AQUA LEISURE IND	RANDOLPH, MA 02368	02/28/95	95039724039	$1,000
BLOCK, GAYLE M	AQUA LEISURE IND	RANDOLPH, MA 02368	06/28/95	95039834113	$1,000
FIREMAN, BARRY R	AQUA LEISURE IND	SHARON, MA 02067	08/08/95	95030012402	$1,000
FIREMAN, HARRY MR	RETIRED	BROOKLINE, MA 02148	08/08/95	95030014645	$1,000
FIREMAN, HARRY		BROOKLINE, MA 02146	02/28/95	95039724145	$1,000
FIREMAN, LISA A	SHARON SCHOOLS	SHARON, MA 02067	08/08/95	95030012402	$1,000
FIREMAN, LOUISE MS	RETIRED	BROOKLINE, MA 02146	08/08/95	95030014645	$1,000
FIREMAN, LOUISE		BROOKLINE, MA 02146	02/28/95	95039724145	$1,000
FIREMAN, NORMA YOST	HOUSWIFE	NORTH QUINCY, MA 02171	02/09/95	95039724145	$1,000
FIREMAN, NORMA YOST	HOUSEWIFE	NORTH QUINCY, MA 02171	06/28/95	95039834132	$1,000
FIREMAN, SIMON C	AGUA LEISURE INDUSTRIES	AVON, MA 02322	02/09/95	95039724145	$1,000
FIREMAN, SIMON C	AQUA LEISURE INDUSTRIES	AVON, MA 02322	06/28/95	95039834118	$1,000
HAND, CAROLE A	HOUSEWIFE	BROCKTON, MA 02402	02/28/95	95039724191	$1,000
HAND, WALTER A	AQUA LEISURE INDUSTRIES	BROCKTON, MA 02402	02/28/95	95039724191	$1,000
HEGARTY, EDNA C	RETIRED	AVON, MA 02322	07/20/95	95030012603	$1,000
HEGARTY, JAMES	AQUA LEISURE IND	AVON, MA 02322	07/20/95	95030012603	$1,000
HOIRIIS, PAUL A JR	AQUA LEISURE IND	MARLBORO, MA 01752	06/29/95	95039834120	$1,000
HOIRUS, PAUL A T JR	AQUA LEISURE INDUSTRIES	MARLBORO, MA 01752	02/28/95	95039724210	$1,000
JOHNSON, MAUREEN R	AQUA LEISURE IND	SOUTH EASTON, MA 02325	06/29/95	95039832859	$1,000
JOHNSON, WILLIAM F	RETIRED	SOUTH EASTON, MA 02375	06/29/95	95039832862	$1,000
KEANE, THOMAS A		BROCKTON, MA 02401	02/28/95	95039724242	$1,000
KEANE, THOMAS A	AQUA LEISURE INC	BRIDGEWATER, MA 02324	06/28/95	95039834122	$1,000
MOELLER, BARBARA MRS	LECHMERE	LAKEVILLE, MA 02347	08/08/95	95030014662	$1,000
MOELLER, BARBARA	HOMEMAKER	LAKEVILLE, MA 02347	03/24/95	95039724320	$1,000
MOELLER, RICHARD A MR	AQUA LEISURE IND	LAKEVILLE, MA 02347	08/08/95	95030014662	$1,000
MOELLER, RICHARD	AQUA LEISURE IND	LAKEVILLE, MA 02347	03/24/95	95039724321	$1,000
NICHOLS, CAROL A	FIREMAN GROUP LIMITED INC	BRIDGEWATER, MA 02324	02/28/95	95039724334	$1,000
NICHOLS, CAROL A	FIREMAN GROUP LIMITED INC	BRIDGEWATER, MA 02324	06/28/95	95039834127	$1,000
NICHOLS, WILLIAM L MR	KELLOWAY TRANS	BRIDGEWATER, MA 02324	07/20/95	95030014663	$1,000
NICHOLS, WILLIAM L		BRIDGEWATER, MA 02324	02/28/95	95039724334	$1,000
SHEAN, CYNTHIA	AQUA LEISURE IND	CANTON, MA 02021	08/08/95	95030013370	$1,000
SHEAN, CYNTHIA	AQUA LEISURE IND	CANTON, MA 02021	09/30/95	95030013370	$1,000
Dole, Robert J					**$36,000**
		Total Selected Contributions			**$36,000**

Exhibit Two

Ill-Gotten Gains? Workers Say They Were Reimbursed for Dole Donations, The Kansas City Star, Apr. 21, 1996, at A1

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TITLE: Ill-gotten gains?
Workers say they were reimbursed for Dole donations
BYLINE: JOE STEPHENS
CREDIT: Staff Writer; 1996 The Kansas City Star Co.
EST. PAGES: 5
DATE: 04/21/96
DOCID: KCST357510
SOURCE: The Kansas City Star; KCST
EDITION: METROPOLITAN; SECTION: NATIONAL/WORLD; PAGE: A1
(Copyright 1996)

BOSTON - Sen. Bob Dole's presidential campaign received thousands of dollars in illegal contributions last year from workers at a Massachusetts sporting goods company, according to three persons who wrote checks to the campaign.

The company, Aqua-Leisure Industries, is run by a Dole campaign official. And last year he, his workers and their families sent the campaign 40 individual checks totaling $40,000.

Three of those contributors said some workers were handed stacks of $100 bills and told to return with checks made out to ``Dole for President.'' They reported personally receiving $4,000.

If true, the arrangement circumvented federal limits on contributions and camouflaged the real source of the money.

``I knew it was illegal - especially when they gave me cash,'' one contributor said. ``You just don't see people with that kind of cash.''

In all, five persons claimed to know about the scheme, which allegedly helped turn the company's relatively small work force into one of Dole's largest sources of individual contributions. The allegations are supported by bank records, federal campaign reports and other evidence.

A lawyer for the company, however, said workers received only their usual pay and that no one laundered contributions.

``I can categorically deny those things happened,'' attorney Richard Stein said. ``There were no cash payments to employees.''

The company's founder and chairman is Simon Fireman, a national vice chairman of finance for Dole's campaign. He has been a major Republican fund-raiser, a trade adviser to three past presidents and most recently was a director of the U.S. Export-Import Bank.

Fireman's office issued a press release last year announcing he planned to ``play a key role on the

Dole for President committee.'' Fireman's brother said Dole has

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known the Massachusetts businessman for ``a very long time'' and that they are ``very good friends.''

Past and present acquaintances contend Fireman has long sought a new federal appointment, especially as a foreign ambassador.

Dole spokeswoman Christina Martin said the campaign was ``not aware of the allegations.''

``Those individuals with concerns along these lines should address them to the FEC (Federal Election Commission),'' she said.

She confirmed that Fireman has raised an undetermined amount for Dole, but added that Dole does not consider Fireman a close friend.

``This is an individual the senator knows of,'' she said.

The $40,000 from Aqua-Leisure workers and their families flowed into Dole's coffers between February and September of last year.

During the same period, people affiliated with the company's outside sales representatives contributed an additional $15,000. And Fireman also held a $1,000-a-person fund-raiser in August at his summer home on Cape Cod.

Federal regulations forbid individuals from giving more than $1,000 per election to a candidate's campaign committee and from giving money in the name of another person. They also forbid companies from paying someone to make a contribution.

Violations of campaign finance laws have dogged Dole's past campaigns. Eight years ago, for example, a money-laundering scandal proved a liability during his last presidential bid.

An investigation then into Dole's 1986 Senate campaign discovered thousands of dollars in illegal contributions from executives at an Overland Park company. Employees said the company reimbursed them to hide the origin of the money.

The Federal Election Commission did not fault Dole himself in that incident. But it did fine his 1988 presidential campaign committee $100,000 for other violations, including accepting illegal donations from corporations. At the time, it was the largest campaign fine ever assessed.

Each of the five persons who agreed to discuss the alleged money laundering at Aqua-Leisure asked not to be identified for fear of retribution.

Three of the sources said they learned of the plan directly from Fireman's assistant, who they said passed out the cash. Two others

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said they learned about the transactions - and in one case received a handful of $100 bills - from members of their own families.

Campaign records from last year confirm that Aqua-Leisure workers and their relatives directed thousands of dollars into the Dole campaign. Each gift was for $1,000, and as many as 12 individual contributions flowed into the campaign on a single day.

The gifts came not only from top managers, but also from secretaries, a bookkeeper and a warehouse manager. In fact, one worker gave twice the legal limit of $1,000, forcing the campaign to return part of her money.

Taken altogether, Aqua-Leisure workers and their families gave more money to Dole than those at all but a small group of major corporations, most with many times more employees. The Massachusetts company distributes swimming goggles and inflatable pool toys nationwide.

In interviews, at least nine contributors affiliated with Aqua-Leisure denied they were reimbursed. Many others could not be reached for comment or did not return phone calls. Four contributors would neither confirm nor deny they were repaid.

Fireman refused to discuss the money-laundering allegations.

Carol Nichols, his executive assistant and corporate clerk, acknowledged she and Fireman raised funds for Dole. But she said they did not ask Aqua-Leisure workers to give and denied reimbursing them.

``This is ridiculous,'' she said.

The workers' stories

Five persons charged that Nichols approached Aqua-Leisure workers and asked them to give. In each case, she reportedly offered to provide cash in advance.

Nichols was vague about Fireman's involvement, according to the three persons who said they discussed the transactions with her directly. But the contributors said they were aware of Fireman's role in the Dole campaign and assumed he knew about the cash transactions.

All three donors acknowledged disliking Fireman because of his management style.

``(Nichols) specifically said, 'Mr. Fireman would like you to contribute to the Dole campaign,' '' one contributor recalled. ``I

kind of balked at it. She said, 'You don't have to use your own money. I'll take care of it.'''

A few days passed before the next conversation.

``I was called into (Nichols') office, by her, and she was sitting there with a stack of $100 bills that had to be one or two inches high,'' the contributor said. ``I almost choked. She peeled off twenty $100 bills and put them in an envelope. She said, 'You can write a personal check.'

``I took them home and deposited them in my checking account. I wrote a $1,000 check to Dole on the account, and my (relative) wrote a $1,000 check to Dole on the account.''

The donor assumed the transaction was illegal because it was in cash.

``Jobs aren't that plentiful. So I was not in a position to say, 'To hell with you, I'm leaving.' I basically had to conform.''

Another source recounted a similar tale involving Nichols.

``She said, 'I'm going to give you this money; deposit it in your account and write a check out to the Dole campaign,''' the contributor recalled. ``I did specifically ask if I was the only one, and she said no.''

Nichols reportedly selected one of a half-dozen or so bank envelopes on her desk and handed it to the contributor. Inside were ten $100 bills.

``Nothing was done in secret or in private,'' the contributor said. ``It was office gossip for a few days - 'Are you going to do it?'

``We were all hoping (Fireman) would get an appointment and would go away.''

A third donor from Aqua-Leisure agreed with the accounts.

``It was a reimbursement deal,'' the worker said. ``I knew for sure two others gave.''

Bank records reinforce the allegations.

The **Kansas City Star** obtained copies of financial records and canceled checks for three separate contributions to Dole. In each case, they show large amounts of cash flowed into contributors' bank accounts just before they donated.

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On a Thursday last year, for example, an Aqua-Leisure worker deposited $2,000 into a personal checking account. The deposit was more than twice the size of any other that month, the only one in cash and increased the account's balance almost fourfold.

The same day, the worker and a family member each wrote a $1,000 personal check to ``Dole for President.''

The worker recalled hearing Nichols say that Dole would get the checks at an upcoming campaign event. The senator's campaign reported receiving them two weeks later, federal records show, and the checks cleared the bank the next day.

The alleged money-laundering follows a pattern described by yet another contributor linked to Fireman.

During the 1992 presidential campaign, the source said, Nichols supplied cash to pay for contributions to the re-election campaign of President George Bush. The contributor deposited the cash in a personal bank account and wrote a $1,000 check to the campaign the next day.

Bank documents support the allegation. And federal records show the Bush campaign received that contribution the same day it collected $1,000 checks from Fireman and company employees.

Nichols, however, said she did not give workers cash for any reason. She said she did not mail campaign literature to employees at home.

In fact, she said, she had no idea how many of her co-workers had given to Dole.

``I haven't approached anybody,'' she said.

Fireman, reached by telephone, responded with curses and insults but did not answer questions.

``You are not now working with some jerk on the local level,'' he said. ``You are a liar, and I have nothing more to say to you.''

Then he hung up.

Contributions flowed

Even without the money-laundering allegations, a computer-aided study of contributions raises its own questions.

At least 14 workers at Aqua-Leisure gave to Dole's campaign - even though former workers and a business directory say the company

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has only about 35 employees. Nichols estimated the figure is closer to 80.

In addition to contributions from the workers, 11 of their family members also gave. And in 15 instances, the relatives contributed the same amount, on the same date, as the Aqua-Leisure worker in their family.

No matter who contributed, each gift was for exactly $1,000 - the legal limit.

That devotion to Dole is striking, given the people involved.

Five contributors said they considered themselves Democrats, were registered Democrats, or favored Bill Clinton for president. Two more said they were Demo-crats until recently. And a few said they had never before given to a political campaign.

At least one contributor was not registered to vote.

Others said they were unaware so many workers at Aqua-Leisure contributed. Nonetheless, federal records show the money arrived in bunches.

For example, at least $12,000 streamed into the Dole campaign from workers and their families on Feb. 28, 1995. That was less than two weeks after Dole began fund-raising for his White House bid, and during the critical ``early money'' phase of the campaign.

And at least $9,000 flowed in on Aug. 8, 1995 - three days after Fireman held the fund-raiser at his summer home. About $9,000 more arrived that day from people affiliated with the company's outside sales representatives.

Thirteen of the contributors gave to a little-known ``compliance committee,'' which pays lawyers and accountants to ensure that Dole's campaign obeys federal law. In effect, those gifts doubled the amount the workers could give under federal regulations.

Despite that loophole, three contributors linked to Aqua-Leisure and its sales representatives still gave too much. The Dole campaign returned at least $3,000 to persons who exceeded the $1,000 limit on gifts to individual campaign committees.

At the top of the Aqua-Leisure corporate chart, Fireman gave the two committees a total of $2,000. His family members and their wives pitched in an additional $10,000.

At the other end of the chart are a secretary, a bookkeeper and a warehouse manager, each of whom gave $1,000 or more.

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Their generosity extended only to Dole. Federal records listing contributions of $200 or more show that, among people listed as Aqua-Leisure employees, last year Fireman alone gave to other federal candidates.

'Not too appealing'

In interviews, some contributors questioned Dole's ability and said they expected to vote for Bill Clinton.

Beverly Baron, a secretary, called herself ``basically a Democrat'' who was leaning toward Dole but had yet to choose a presidential candidate.

``I'm still open,'' she stressed. ``The choice I have is not too appealing.''

When reminded that she and her husband gave Dole $2,000, and asked whether she was reimbursed, Baron paused.

``I really couldn't say,'' she finally replied. ``I can't say that.''

Asked what form the reimbursement may have taken, she paused again.

``I don't know. I don't know what to say for that,'' she said. ``I don't know how to answer you. I really just don't feel comfortable saying.''

Cynthia Shean, a bookkeeper, said she also considered herself a Democrat and that she probably would vote for Clinton. When told campaign records indicated that she, too, had given to Dole, Shean stressed that Fireman had nothing to do with her contributions.

The campaign reported receiving Shean's first check on Aug. 8, the same day it collected eight $1,000 checks from her co-workers and their families. Yet the bookkeeper said she gave in response to a mail solicitation.

``I don't know how I got on the list,'' she said.

Credit manager Tom Keane said no one asked him to give. Although he considered himself a Democrat until recently, he said he spontaneously sent two checks, for $1,000 each, to Dole's campaign committees.

Keane said he was unaware that anybody else at Aqua-Leisure contributed.

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Records show that Dole's campaign received Keane's first contribution on Feb. 28, 1995 - the same day it received $11,000 from his co-workers and members of their families.

None of the company's outside sales representatives said they were reimbursed. Even so, they and their relatives gave $15,000 in contributions in $1,000 increments, often on the same days as Aqua-Leisure employees. And some acknowledged giving, legally, at Fireman's insistence.

Sales representative Gary Dillman, for example, said Fireman sent him a letter suggesting it would be ``very advisable'' to contribute - wording that Dillman considered a bit threatening.

``I sure questioned it at the time, believe me,'' said Dillman, who contributed $1,000 even though he then favored Gen. Colin Powell.

``If Dole is elected, (Fireman) probably would become part of his Cabinet,'' Dillman said. ``There has to be a benefit out there somewhere, or why would you do it?''

ART: CAPTION:How one transaction allegedly worked;
CREDIT:DAVID EAMES/The Star;
CAPTION:**Aqua-Leisure Industries**;
CREDIT:Source: Interviews, business directories;
CAPTION:Contributions in bunches;
CREDIT:Source: Federal Election CommissionGraphic;
CAPTION:Dole's contributors;
CREDIT:Source: The Center for Responsive Politics;
Graphic (4, illustrations);
CAPTION:Simon Fireman, founder of Aqua-Leisure, is a Dole campaign official and is said to have long sought a foreign ambassadorship or other appointment.;
Photo (color)
DESCRIPTORS: Government; crime ; LAW ENFORCEMENT

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Exhibit Three

Dole Calls for Investigation-Another Worker Says She Was Reimbursed for Campaign Donation,
The Kansas City Star, Apr. 22, 1996 at A1

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TITLE: Dole calls for investigation
Another worker says she was reimbursed for campaign donation.
BYLINE: JOE STEPHENS; JAMES KUHNHENN
CREDIT: Staff Writers
EST. PAGES: 2
DATE: 04/22/96
DOCID: KCST358076
SOURCE: The **Kansas City Star**; KCST
EDITION: MID-AMERICA; SECTION: NATIONAL/WORLD; PAGE: A1
(Copyright 1996)

Sen. Bob Dole on Sunday said the government should investigate allegations that his presidential campaign received thousands of dollars in illegal contributions from employees at a company headed by one of his national vice chairmen.

The **Kansas City Star** reported Sunday that three Dole contributors claimed that the company's executive assistant handed some workers stacks of $100 bills last year. Then they were told to return with checks made out to ``Dole for President.''

``If somebody did that, they're in deep trouble,'' Dole said on CBS' Face the Nation and in an interview after the program.

``If somebody violated the campaign law, whether it's my campaign or Bill Clinton's or anybody else, they are going to have to suffer the consequences.''

The Federal Election Commission should investigate, he said, and maybe the Justice Department.

The campaign official, Simon Fireman of Boston, has visited Dole's office, the senator said. He added that they have met ``two or three times.''

``He'll be suspended very quickly if he's involved in any improprieties, I can tell you that,'' Dole said.

Fireman is a national vice chairman of finance for the campaign.

He also is chairman of **Aqua-Leisure Industries**, a sporting goods company near Boston.

The contributors said they personally received $4,000. Federal records show that last year Fireman, his workers and their families sent Dole's campaign 40 checks totaling $40,000.

The gifts came not only from top managers, but also from secretaries, a bookkeeper and a warehouse manager.

On Sunday, a fourth contributor charged that Fireman's executive

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assistant asked her to give $1,000 to Dole's campaign. She said the assistant gave her ten $100 bills before she wrote the check.

The contributor said three other workers told her they, too, got cash for contributing.

``I'll definitely go before a grand jury,'' the contributor said. ``I will not go down for (this).''

Fireman could not be reached Sunday, and his lawyer Richard Stein would say only ``no comment.''

Earlier this month, however, Stein said workers received only their usual pay and that no one laundered campaign contributions. ``I can categorically deny those things happened,'' he said.

If true, the allegations circumvented federal limits on contributions and camouflaged the real source of the money.

Federal regulations forbid individuals from giving more than $1,000 per election to a candidate's campaign committee. They also forbid giving contributions in the name of another person.

Dole said Sunday he did not know if the allegations were accurate.

``That's for somebody else to determine,'' Dole said. ``It's an allegation that's been made and ought to be checked.''

Whatever the outcome, the allegations are likely to add momentum to calls for political reforms.

``It's one more nail in the coffin of the current campaign finance system,'' said Ellen Miller, head of the Center for Responsive Politics in Washington.

Larry Sabato, a political science professor at the University of Virginia, said that if true, the allegations violate the law and would put the Dole campaign on the defensive.

But Dole would cut his losses fast, Sabato said.

``It will be a blip in the campaign so long as Dole had no personal knowledge and other similar incidents are not revealed, Sabato said.

ART: CAPTION:Senate Majority Leader Bob Dole spoke to reporters Sunday after appearing on CBS' ``Face the Nation'' in Washington, D.C.;
Photo;

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CREDIT:The Associated Press
DESCRIPTORS: Elections; crime ; U.S. ELECTIONS; POLITICS; LAW ENFORCEMENT
OTHER TERMS: Election '96

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Ellen S. Miller, Executive Director
Center for Responsive Politics
1320 Nineteenth Street, NW
Washington, DC 20036

RE: MUR 4355

Dear Ms. Miller:

This letter acknowledges receipt on May 7, 1996, of your complaint 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 4355. 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,

Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosure
Procedures

9304336126

FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Robert E. Lighthizer, Treasurer
Dole for President, Inc.
Dole for President Compliance Committee, Inc.
P.O. Box 77658
Washington, DC 20013

RE: MUR 4355

Dear Mr. Lighthizer:

The Federal Election Commission received a complaint which indicates that the Dole for President, Inc., Dole for President Compliance Committee, Inc. ("Committees") 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 4355. 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 Committees 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 a member of the Central Enforcement Docket at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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2. Procedures
3. Designation of Counsel Statement

9 3 0 4 3 3 6 1 2 2 3

FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Mr. James Hegarty
27 Robbins Street
Avon, MA 02322

RE: MUR 4355

Dear Mr. Hegarty:

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 4355. Please refer to this number in all future correspondence.

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

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93043861222

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures
1. Complaint
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9304336130

FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Ms. Cynthia Shean
474 Washington Street
Canton, MA 02021

RE: MUR 4355

Dear Ms. Shean:

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 4355. Please refer to this number in all future correspondence.

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

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Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Ms. Maureen R. Johnson
585 Turnpike Street, #18
South Easton, MA 02325

RE: MUR 4355

Dear Ms. Johnson:

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 4355. Please refer to this number in all future correspondence.

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

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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1. Complaint
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93043361304

FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Mr. William F. Johnson
585 Turnpike Street, #18
South Easton, MA 02325

RE: MUR 4355

Dear Mr. Johnson:

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 4355. Please refer to this number in all future correspondence.

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

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9 3 0 4 3 3 6 1 3 0 5

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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1. Complaint
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9804361306

FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Mr. Thomas A. Keane
30 Meadow Lane, #10
Bridgewater, MA 02324

RE: MUR 4355

Dear Mr. Keane:

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 4355. Please refer to this number in all future correspondence.

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

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9 3 0 4 3 3 6 1 3 0 7

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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93043386130 3

FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Ms. Edna C. Hegarty
27 Robbins Street
Avon, MA 02322

RE: MUR 4355

Dear Ms. Hegarty:

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 4355. Please refer to this number in all future correspondence.

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

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9304386130

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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1. Complaint
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93043361310

FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

William L. Nichols
9 Blueberry Knoll
Bridgewater, MA 02324

RE: MUR 4355

Dear Mr. Nichols:

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 4355. Please refer to this number in all future correspondence.

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

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Mrs. Carol A. Nichols
9 Blueberry Knoll
Bridgewater, MA 02324

RE: MUR 4355

Dear Mrs. Nichols:

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 4355. Please refer to this number in all future correspondence.

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

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures
1. Complaint
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98043961314

FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Carol Nichols, Clerk
Aqua-Leisure Industries, Inc.
9 Blueberry Knolls
Bridgewater, MA 02324

RE: MUR 4355

Dear Ms. Nichols:

The Federal Election Commission received a complaint which indicates that Aqua-Leisure Industries, 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 4355. 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 Aqua-Leisure Industries, 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.

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Mr. Richard Moeller
36 Staples Shore Road
Lakeville, MA 02347

RE: MUR 4355

Dear Mr. Moeller:

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 4355. Please refer to this number in all future correspondence.

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

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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1. Complaint
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93043861313

FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Ms. Barbara Moeller
36 Staples Shore Road
Lakeville, MA 02347

RE: MUR 4355

Dear Ms. Moeller:

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 4355. Please refer to this number in all future correspondence.

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

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Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Thomas A. Keane
290 W. Elm Street
Brockton, MA 02401

RE: MUR 4355

Dear Mr. Keane:

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 4355. Please refer to this number in all future correspondence.

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

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Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Paul A.T. Hoirus, Jr.
79 A-B Broadmeadow Road
Marlboro, MA 01752

RE: MUR 4355

Dear Mr. Hoirus:

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 4355. Please refer to this number in all future correspondence.

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

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Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Walter A. Hand
40 Annette Road
Brockton, MA 02402

RE: MUR 4355

Dear Mr. Hand:

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 4355. Please refer to this number in all future correspondence.

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

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Ms. Carole A. Hand
40 Annette Road
Brockton, MA 02402

RE: MUR 4355

Dear Ms. Hand:

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 4355. Please refer to this number in all future correspondence.

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

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93043361327

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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93043961323

FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Mr. Harry Fireman
348 Kent Street
Brookline, MA 02146

RE: MUR 4355

Dear Mr. Fireman:

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 4355. Please refer to this number in all future correspondence.

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

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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9304353613370

FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Mr. Simon C. Fireman
P.O. Box 239
Avon, MA 02322

RE: MUR 4355

Dear Mr. Fireman:

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 4355. 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.

93043861331

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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

9304386132

FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Ms. Norma Yost Fireman
1001 Marina Drive, #803E
North Quincy, MA 02171

RE: MUR 4355

Dear Ms. Fireman:

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 4355. Please refer to this number in all future correspondence.

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

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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

FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Ms. Louise Fireman
348 Kent Street
Brookline, MA 02146

RE: MUR 4355

Dear Ms. Fireman:

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 4355. Please refer to this number in all future correspondence.

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

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Gayle M. Block
68 Pine Avenue
Randolph, MA 02368

RE: MUR 4355

Dear Mr. Block:

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 4355. Please refer to this number in all future correspondence.

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

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93043931377

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures
1. Complaint
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FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Mrs. Lisa A. Fireman
19 Kennedy Road
Sharon, MA 02067

RE: MUR 4355

Dear Mrs. Fireman:

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 4355. Please refer to this number in all future correspondence.

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

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93043361372

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures
1. Complaint
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3. Designation of Counsel Statement

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Barry R. Fireman
19 Kennedy Road
Sharon, MA 02067

RE: MUR 4355

Dear Mr. Fireman:

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 4355. 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.

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures
1. Complaint
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FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Stephen Berenson
31 Owl Drive
Sharon, MA 02067

RE: MUR 4355

Dear Mr. Berenson:

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 4355. Please refer to this number in all future correspondence.

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

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9304361317

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures
1. Complaint
2. Procedures
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9304386134

FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Jacob Baron
839 E. Ashland Street
Brockton, MA 02402-1906

RE: MUR 4355

Dear Mr. Baron:

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 4355. Please refer to this number in all future correspondence.

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

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures
1. Complaint
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3. Designation of Counsel Statement

9304336135

FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 14, 1996

Mrs. Bev Baron
839 E. Ashland Street
Brockton, MA 02402-1906

RE: MUR 4355

Dear Mrs. Baron:

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 4355. Please refer to this number in all future correspondence.

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

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures
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2. Procedures
3. Designation of Counsel Statement

93043536113 13

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

MAY 28 10 30 AM '96

MAY 24, 1996

COLLEEN T. SEALANDER, ATTORNEY
CENTRAL ENFORCEMENT DOCKET
FEDERAL ELECTIONS COMMISSION
WASHINGTON, DC 20463

RE: MUR 4355

DEAR MS. SEALANDER:

I DID DONATED $1,000.00 TO THE DOLE FOR PRESIDENT CAMPAIGN. AT THE TIME I WAS EMPLOYED BY AGUA LEISURE INDUSTRIES. I WAS GIVEN THE MONEY, IN ADVANCE, BY CAROL NICHOLS, WHO IS SIMON FIREMAN'S EXECUTIVE ASSISTANT AT AQUA LEISURE INDUSTRIES. MS. NICHOLS TOLD ME MR. FIREMAN'S HAD REQUEST THAT BOTH MYSELF AND MY WIFE DONATE TO THE DOLE FOR PRESIDENT CAMPAIGN. I WAS GIVEN A TOTAL OF $2,000.00, BY CAROL NICHOLS, WHICH MY WIFE DEPOSITED INTO OUR CHECKING ACCOUNT AND WE EACH WROTE A PERSONNEL CHECK FOR $1,000.00, WHICH I THEN GAVE TO CAROL NICHOLS.

I WISH TO KEEP THIS MATTER CONFIDENTIAL BECAUSE OF FEAR OF REPERCUSSIONS BY SIMON FIREMAN, WHO IS A NATIONAL VICE-CHAIRMAN OF FINANCE FOR MR. DOLE'S CAMPAIGN.

I HAVE HAD A LENGTHY INTERVIEW REGARDING THIS MATTER WITH THE F.B.I. AND HAVE APPEARED BEFORE A FEDERAL GRAND JURY. I HAVE FULLY COOPERATED AND TRUTHFULLY ANSWERED ALL THEIR QUESTIONS.

I AM ALSO WILLING TO COOPERATE FULLY WITH YOUR AGENCY, IN REGARDS TO THIS MATTER.

YOURS TRULY,

WALTER A. HAND
40 ANNETTE ROAD
BROCKTON, MA 02402

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
MAY 28 10 30 AM '96

MAY 24, 1996

COLLEEN T. SEALANDER, ATTORNEY
CENTRAL ENFORCEMENT DOCKET
FEDERAL ELECTIONS COMMISSION
WASHINGTON, DC 20463

RE: MUR 4355

DEAR MS. SEALANDER:

I, WILLINGLY, DONATED $1,000.00 TO THE DOLE FOR PRESIDENT CAMPAIGN. MY HUSBAND, WHO WAS THEN EMPLOYED BY AQUA LEISURE INDUSTRIES, WAS GIVEN THE MONEY IN ORDER TO MAKE THE DONATION. THE MONEY WAS GIVEN TO HIM BY CAROL NICHOLS, WHO IS SIMON FIREMAN'S EXECUTIVE ASSISTANT AT AQUA LEISURE INDUSTRIES. MS. NICHOLS TOLD MY HUSBAND THAT IT WAS MR. FIREMAN'S REQUEST THAT BOTH MY HUSBAND AND I DONATE TO THE DOLE FOR PRESIDENT CAMPAIGN.

I WISH TO KEEP THIS MATTER CONFIDENTIAL BECAUSE OF FEAR OF REPERCUSSIONS BY SIMON FIREMAN, WHO IS A NATIONAL VICE-CHAIRMAN OF FINANCE FOR MR. DOLE'S CAMPAIGN.

I HAVE HAD A LENGTHY INTERVIEW REGARDING THIS MATTER WITH THE F.B.I. AND I HAVE FULLY COOPERATED AND TRUTHFULLY ANSWERED ALL THEIR QUESTIONS.

YOURS TRULY,

Carole A. Hand

CAROLE A. HAND
40 ANNETTE ROAD
BROCKTON, MA 02402

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KERN, ROACH & CARPENTER
A PROFESSIONAL CORPORATION

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

MAY 30 11 27 AM '96

LEILA R. KERN
CHRISTINE M. ROACH
M. ELLEN CARPENTER
MARY AUSTIN DOWD

24 SCHOOL STREET
BOSTON, MASSACHUSETTS 02108
(617) 720-1800
FAX: (617) 720-0720

May 29, 1996

VIA FEDERAL EXPRESS

Colleen T. Sealander, Attorney
Central Enforcement Docket
Federal Election Commission
999 E St. NW - Suite 657
Washington, DC 20463

RE: MUR 4355

Dear Ms. Sealander:

Please be advised that I represent Ms. Cynthia Cushman (formerly known as Cynthia Shean) in connection with the above matter. Enclosed with this letter is a Statement of Designation of Counsel signed by Ms. Cushman. Please direct any future communications you wish to have with Ms. Cushman to this office.

I am in receipt of your letter dated May 14, 1996. As I believe you know, the United States Attorney for the District of Massachusetts is engaged in a criminal investigation of certain matters relating to campaign contributions made by employees of Aqua-Leisure Industries, Inc., the named respondent in the complaint enclosed with your letter.

As a result of the criminal investigation, and the fact that my client is not named as a respondent in the matter before you, Ms. Cushman will not be submitting responsive material to you at this time.

Should you have questions with respect to Ms. Cushman, please feel free to contact me.

Very truly yours,

Christine M. Roach

Christine M. Roach

9304396137

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4355

NAME OF COUNSEL: CHRISTINE M. ROACH

FIRM: KERN, ROACH + CARPENTER, P.C.

ADDRESS: 24 School Street
Boston, MA 02108

TELEPHONE: (617) 720 - 1800

FAX: (617) 720 - 0720

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

MAY 30 11 27 AM '96

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.

5/23/96 Cynthia Cushman
Date Signature

RESPONDENT'S NAME:

ADDRESS:

TELEPHONE: HOME( )

BUSINESS( )

9304386135 2

COSGROVE, EISENBERG AND KILEY, P.C.
COUNSELORS AT LAW

MARTIN S. COSGROVE
LEWIS C. EISENBERG
THOMAS R. KILEY
PETER M. McELROY
CARL VALVO

PAUL B. MATTHEWS
PETER J. HARRINGTON, JR
SUZANNE B. MATTHEWS
STEVEN H. GOLDBERG
MATTHEW L. SCHEMMEL
MARTHA E. KRACHE
WILLIAM J. CINTOLO
THOMAS B. DROHAN

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

~~May 31~~
June 3

May 28, 1996

Colleen T. Sealander, Esq.
Central Enforcement Docket
Federal Election Commission
Washington, D.C. 20463

Re: The Center for Responsive Politics v. Aqua-Leisure Industries, Inc., MUR #4355

Dear Ms. Sealander:

Please be advised that I represent the following individuals in regard to the above referenced matter:

Steven Berenson, Lisa Fireman, and Barry Fireman.

Any future efforts to contact any of these individuals should be directed to me at the Boston office of this lawfirm.

Mr. Berenson, Mr. Fireman, and Mrs. Fireman each received, via regular United States mail, a copy of your letter dated May 14, 1996, and the attached Complaint of the Center For Responsive Politics. At my clients' request, I have reviewed the materials you sent to them. In reviewing the Complaint, it is clear that the sole respondent to it is the corporate entity identified as Aqua-Leisure Industries, Inc. None of my clients are listed as respondents on the face of the Complaint, nor are they identified as respondents in the body of the Complaint. Therefore, on behalf of each of my clients I request that you send a follow up letter to me, informing each of my clients separately, that they are not respondents to the Complaint. In the meantime, please consider this letter to be Mr. Berenson's, Mr. Fireman's and Mrs. Fireman's response to your May 14th letter.

Very truly yours,

Matthew L. Schemmel

803 HANCOCK STREET P.O. BOX 189 QUINCY, MA 02170-0997 (617) 479-7770 TELECOPIER (617) 773-6901

ONE INTERNATIONAL PLACE SUITE 1820 BOSTON, MA 02110-2600 (617) 439-7775 TELECOPIER (617) 330-8774

9304361357

COUNSELLORS AT LAW
HUTCHINS, WHEELER & DITTMAR
A PROFESSIONAL CORPORATION
101 FEDERAL STREET, BOSTON, MASSACHUSETTS 02110
TELEPHONE 617-951-6600 FACSIMILE 617-951-1295

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
~~MAY 31~~ 10 14 AM '96
June 3

ROBERT P. SHERMAN
617-951-6936

May 30, 1996

Colleen T. Sealander, Attorney
Central Enforcement Docket
Federal Election Commission
Washington, D.C. 20463

Re: The Center for Responsive Politics v. Aqua-Leisure Industries, Inc.
MUR4355

Dear Ms. Sealander:

Please be advised that this firm represents Aqua-Leisure Industries, Inc. ("Aqua-Leisure"). In accordance with your request, I am enclosing a Statement of Designation of Counsel.

A complaint naming Aqua-Leisure as respondent has been filed with the Federal Election Commission by The Center for Responsive Politics. I have had an opportunity to review it and would like to take this opportunity to respond briefly to the allegations set forth in the complaint. The complaint alleges that Aqua-Leisure made contributions to the presidential campaign of Robert Dole in the name of another person or persons and made contributions of corporate funds to that campaign. It is our understanding that Aqua-Leisure has made no contributions to the presidential campaign of Mr. Dole in the name of another person or persons and that there have been no contributions of corporate funds of Aqua-Leisure to the presidential campaign of Mr. Dole as alleged in the complaint. Accordingly, let me suggest that there is no support for the conclusion apparently drawn by the complainant that Aqua-Leisure funds were used to make contributions to the campaign.

It is my understanding that you will be making a recommendation to the Commission as to whether it should close the file in this matter or open a formal investigation. I would appreciate it if you would forward this response to the Commission as part of your report.

Should you need additional information, please do not hesitate to contact me.

Very truly yours,

Robert P. Sherman

RPS:gah:70555-1

9304361371

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4355

NAME OF COUNSEL: Robert P. Sherman

FIRM: Hutchins, Wheeler & Dittmar

ADDRESS: 101 Federal Street

Boston, Massachusetts 02110

TELEPHONE: (617) 951-6600

FAX: (617) 951-1295

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.

Date

Vice President Signature

RESPONDENT'S NAME: Aqua-Leisure Industries, Inc.

ADDRESS: 525 Bodwell Street, P.O. Box 239

Avon, Massachusetts 02332

TELEPHONE: HOME( )

BUSINESS(508) 587-5400

93043861355

LEPPO & LEPPO
ATTORNEYS AT LAW

MARTIN K. LEPPO
CARL R. LEPPO
ROBERT M. GOLDSTEIN

FIFTEEN SOUTH MAIN STREET
RANDOLPH, MASSACHUSETTS 02368
(617) 961-3344 (800) 392-6049
FAX (617) 961-4841

BOSTON OFFICE:
ONE COMMERCIAL WHARF NORTH
BOSTON, MASSACHUSETTS 02108
(617) 742-0700

June 2, 1996

General Counsel's Office
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
JUN 4 12 12 PM '96

RE: MUR 4355

Dear Sir/Madam:

I am writing in response to the complaint received from your office regarding alleged violations by Carol Nichols of the Federal Election Campaign Act of 1971, as amended. My office represents Ms. Nichols in her individual capacity.

The United States Attorney's Office for the District of Massachusetts is conducting an investigation into the same allegations that are contained in complaint number MUR 4355. A grand jury is presently considering evidence with regard to these allegations. Therefore, please be advised that, at this time, Ms. Nichols invokes her right against self-incrimination as guaranteed by the Fifth Amendment of the United States Constitution and respectfully declines to respond to the allegations contained in the complaint.

Respectfully,

Robert M. Goldstein

2304386135 5

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4355

NAME OF COUNSEL: Martin K Leppo

FIRM: Leppo & Leppo

ADDRESS: 15 South Main Street

Randolph, MA 02368

TELEPHONE: (617) 961-3344

FAX: (617) 961-4841

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Jun 4 12 12 PM '96

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.

6/3/96
Date

Signature

RESPONDENT'S NAME: Carol A. Nichols

ADDRESS: 9 Blueberry Knoll

Bridgewater, MA 02324

TELEPHONE: HOME( )

BUSINESS(508) 587-5400

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Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, Massachusetts 02111

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: 202/434-7300
Fax: 202/434-7400

Telephone: 617/542-6000
Fax: 617/542-2241

Tracy A. Miner

Direct Dial Number
617/348-1694

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
'96 MAY 30 11 08 AM

May 30, 1996

BY CERTIFIED MAIL

Colleen T. Sealander, Attorney
Central Enforcement Docket
Federal Election Commission
Washington, DC 20463

Re: MUR 4355

Dear Ms. Sealander:

Please be advised that I represent the following individuals who have received a copy of the Complaint in the above-referenced matter: Beverly Baron, Jacob Baron, Gayle Block, Maureen Johnson, William Johnson, Paul Hoiriis, James Hegarty, Edna Hegarty, Richard Moeller, Barbara Moeller and Thomas Keane. Please direct all future notifications and any other future communications from the Commission to any of these individuals to me.

Although each of the above-named individuals received a copy of the Complaint of the Center for Responsive Politics, none of these individuals are named as a respondent in that action. Therefore, no response to the Complaint by my clients is required or appropriate.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Tracy A. Miner

Tracy A. Miner

TAM/sff:[illegible]

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BOB DOLE FOR PRESIDENT

June 4, 1996

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Jun 6 11 51 AM '96

Colleen T. Sealander, Esq.
Central Enforcement Docket
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 4355

Dear Ms. Sealander:

This letter responds to your letter dated May 14, 1996 in the above-referenced MUR regarding a complaint against Aqua-Leisure, Inc.

As you may know, the Dole for President ("DFP") Campaign made a written request on April 22, 1996 to the Federal Election Commission, attached hereto, to conduct an inquiry into press reports regarding Aqua-Leisure and allegations of impermissible campaign contributions. Though the campaign has no information of the alleged activities, DFP nonetheless identified, and transmitted into an escrow account on May 8, 1996, a total of 19,000 dollars in contributions made by employees of Aqua-Leisure. (See attached memorandum dated May 8, 1996.) These contributions will remain in escrow and will not be used by the campaign unless the campaign determines in the future that the allegations are baseless.

Further, the campaign is cooperating with an investigation of Simon Fireman by the United States Attorney's Office of the District of Massachusetts. DFP has provided documents to the U.S. Attorney's Office relating to contributions attributed to Mr. Fireman, and individuals associated with DFP have been interviewed by F.B.I. agents working on behalf of Assistant U.S. Attorney Joseph F. Savage, Jr. Mr. Savage is tentatively scheduled to conduct sworn interviews of some of those individuals on June 10, 1996 in Washington, DC.

Let me know if I can be of further assistance.

Sincerely,

Douglas C. Wurth

Douglas C. Wurth
General Counsel

9 9 0 4 3 8 6 1 3 5 9

Authorized and paid for by Dole for President, Inc., Robert Lighthizer, Treasurer
810 First Street, Northeast • Suite 300 • Washington, D.C. 20002 • (202) 414-6400

BOB DOLE FOR PRESIDENT.

April 22, 1996

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

Dear Mr. Noble:

On April 21, 1996 the Dole for President Campaign ("campaign") first learned through press reports of allegations concerning impermissible campaign contributions. According to those reports, employees of a certain corporation have alleged that a number of employees who contributed to the campaign were improperly reimbursed by the corporation.

The campaign has no information of the alleged activities other than the press reports. However, the campaign is concerned by those allegations and requests the Federal Election Commission to conduct an inquiry into their merits. Senator Dole and the campaign have made it clear that contributions will be raised in full compliance with the federal election laws. Your inquiry, therefore, will help determine if any person has acted improperly and will assist the campaign in evaluating what contributions, if any, need to be returned.

Thank you for your attention to this matter.

Sincerely,

Douglas C. Wurth
General Counsel

9 8 0 4 3 8 6 1 3 6 0

Authorized and paid for by Dole for President, Inc., Robert Lighthizer, Treasurer
810 First Street, Northeast • Suite 300 • Washington, D.C. 20002 • (202) 414-6400

BOB DOLE FOR PRESIDENT.

BY FAX

May 8, 1996

To: Clara
From: Allen Haywood

Please transfer from our Primary Contributions Account #6520398006 $12,000 into our Primary Contribution Escrow Account #6670183877. Also, please transfer $7,000 from our Compliance Contribution Account #6670176152 into our Compliance Contribution Escrow Account #6670183885.

Authorized and paid for by Dole for President, Inc., Robert Lighthizer, Treasurer

810 First Street, Northeast • Suite 300 • Washington, D.C. 20002 • (202) 414-6400

10667730 FIREMAN, SIMON AQUA LEISURE INDUSTRIES CHAIRMAN

10594828	02/09/95	02/09/95	0005	1000.00	1000.00	250.00 D
10760036	06/28/95	06/28/95	0801	1000.00	1000.00	0.00 C

10671089 BERENSON, STEVEN AQUA LEISURE IND. PRESIDENT

10618199	02/28/95	02/28/95	0027	1000.00	1000.00	250.00 D
10803156	08/08/95	08/08/95	0802	1000.00	1000.00	0.00 C

10671107 MOIRIIS, PAUL AQUA LEISURE INDUSTRIES CHIEF FINAN. OFFICER

10618188	02/28/95	02/28/95	0026	1000.00	1000.00	250.00 D
10760496	06/29/95	06/29/95	0801	1000.00	1000.00	0.00 C

10671110 KEANE, THOMAS AQUA LEISURE INN, INC. CREDIT MANAGER

10618189	02/28/95	02/28/95	0026	1000.00	1000.00	250.00 D
10760033	06/28/95	06/28/95	0801	1000.00	1000.00	0.00 C

10671123 BLOCK, GAYLE AQUA LEISURE IND. IMPORT MANAGER

10618186	02/28/95	02/28/95	0026	1000.00	1000.00	250.00 D
10760034	06/28/95	06/28/95	0801	1000.00	1000.00	0.00 C

10671175 HAND, WALTER AQUA LEISURE INDUSTRIES DIR. OF OPERATIONS

10618150	02/28/95	02/28/95	0025	1000.00	1000.00	250.00 D

10680160 MOELLER, RICHARD AQUA LEISURE IND. SALES REP.

10654250	03/24/95	03/24/95	0008	1000.00	1000.00	250.00 D
10803149	08/08/95	08/08/95	0802	1000.00	1000.00	0.00 C

10725395 JOHNSON, MAUREEN AQUA LEISURE IND. IMPORT ASSISTANT

10760390	06/29/95	06/29/95	0021	1000.00	1000.00	250.00 D

10733301 BARON, BEVERLY AQUA LEISURE IND. INC. SECRETARY

10785402	07/20/95	07/20/95	0048	1000.00	1000.00	250.00 D

10733307 HEGARTY, JAMES AQUA LEISURE IND. WAREHOUSE MANAGER

10785381	07/20/95	07/20/95	0046	1000.00	1000.00	250.00 D

10739618 SHEAN, CYNTHIA AQUA LEISURE IND. BOOKKEEPER

10803055	08/08/95	08/08/95		0040	1000.00	250.00 D
10803147	08/08/95	08/08/95	RD	0802	1000.00	0.00 C
10823762	08/08/95	09/20/95	RD	0802	1000.00	-1000.00 0.00 C
10841092	09/30/95	09/30/95	NF	0061	1000.00	1000.00 0.00 D
10857402	09/30/95	10/20/95	CM	0061	1000.00	1000.00 0.00 C
10857403	09/30/95	10/20/95	CM	0061	1000.00	-1000.00 0.00 D

	10857428	09/30/95	10/20/95	NF 0061	1000.00	-1000.00	0.00 C

10739700	FIREMAN, BARRY		AQUA LEISURE IND.				SALES
	10803085	08/08/95	08/08/95	0041	1000.00	1000.00	250.00 D

9 8 0 4 3 8 6 1 3 6 3

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4355

NAME OF COUNSEL: Douglas C. Wurth

FIRM:

ADDRESS: 810 First Street, N.E., Suite 300
Washington, DC 20002

TELEPHONE: (202) 414-6492

FAX: (202) 414-6358

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
JUN 6 9 45 AM '96

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.

6/4/96
Date

Signature

RESPONDENT'S NAME: Robert E. Lighthizer/Bole for President

ADDRESS: 810 First Street, N.E., Suite 300
Washington, DC 20002

TELEPHONE: HOME( )

BUSINESS (202) 414-6492

9304386136 4

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, Massachusetts 02111

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: 202/434-7300
Fax: 202/434-7400

Telephone: 617/542-6000
Fax: 617/542-2241

Tracy A. Miner

Direct Dial Number
617/348-1694

June 10, 1996

Colleen T. Sealander, Attorney
Central Enforcement Docket
Federal Election Commission
Washington, DC 20463

Re: MUR 4355

Dear Ms. Sealander:

Enclosed please find executed statement of designation of counsel forms for Beverly Baron, Jacob Baron, Maureen Johnson, William F. Johnson, Thomas Keane, Paul Hoiriis, Jr., Richard Moeller, Barbara Moeller, and Gayle Block. Please direct any further communications to these individuals to me.

I would appreciate it if I could have an additional week to submit a response to the allegations of the Complaint, to the extent that any of my clients determine to submit a response.

Thank you for your courtesy in this matter.

Very truly yours,

Tracy A. Miner

Tracy A. Miner

TAM/df:13/606807.1
Enclosures

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
JUN 12 11 10 AM '96

9 8 0 4 3 3 6 1 3 1 5

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4355

NAME OF COUNSEL: Tracy A. Miner

FIRM: Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.

ADDRESS: One Financial Center
Boston, MA 02111

TELEPHONE: (617) 348-1694

FAX: (617) 542-2241

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JUN 12 11 10 AM '96

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.

5-20-96
Date

Beverly C. Baron
Signature

RESPONDENT'S NAME: Beverly C. Baron

ADDRESS: 839 E ASHLAND ST.
BROCKTON MA 02402

TELEPHONE: HOME (508) 584-1989

BUSINESS (508) 587-5400

9804386136 6

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4355

NAME OF COUNSEL: Tracy A. Miner

FIRM: Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.

ADDRESS: One Financial Center
Boston, MA 02111

TELEPHONE: (617) 348-1694

FAX: (617) 542-2241

RECEIVED
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COMMISSION
OFFICE OF GENERAL
COUNSEL

JUN 12 11 10 AM '96

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.

5-20-96
Date

Jacob Baron
Signature

RESPONDENT'S NAME: JACOB BARON

ADDRESS: 839 E ASHLAND ST.
BROCKTON, MA 02402

TELEPHONE: HOME (508) 584-1989

BUSINESS (508) 583-5820

9304396137

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4355

NAME OF COUNSEL: TRACY A MINER

FIRM: ONE FINANCIAL CENTER
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY, & Popeo PC

ADDRESS: BOSTON, MA 02111

TELEPHONE: (617) 348-1694

FAX: (617) 542-2241

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.

5/21/96 Maureen R. Johnson
Date Signature

RESPONDENT'S NAME: Maureen R. Johnson

ADDRESS: 585 Turnpike St #18
So. Easton, MA 02375

TELEPHONE: HOME (508) 238-4081

BUSINESS (508) 587-5400

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Jun 12 11 10 AM '96

9304386138

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4355

NAME OF COUNSEL: Tracy A. Miner Attorney

FIRM: Mintz, Levin, Cohn, Glovsky and Popeo, P.C.

ADDRESS: One Financial Center
Boston, Massachusetts 02111

TELEPHONE: (617) 348-1694

FAX: (617) 542-6000

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.

5-21-96 William F. Johnson
Date Signature

RESPONDENT'S NAME: William F. Johnson

ADDRESS: 585 Turnpike St. #18
South Easton, Ma. 02375

TELEPHONE: HOME (508) 238-4081
BUSINESS ( ) Retired

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
JUN 12 11 11 AM '96

23043861362

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4355

NAME OF COUNSEL: Tracy A. Miner

FIRM: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

ADDRESS: One Financial Center
Boston, MA 02111

TELEPHONE: (617) 348-1694

FAX: (617) 542-2241

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Jun 12 11 11 AM '96

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.

5/14/96
Date

Signature

RESPONDENT'S NAME: Thomas A. Keane

ADDRESS: 290 Elm St.
Brockton, MA
02401

TELEPHONE: HOME( )

BUSINESS( )

2304386137C

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4355

NAME OF COUNSEL: Tracy A Miner

FIRM: Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, PC.

ADDRESS: One Financial Center
Boston, MA
02111

TELEPHONE: (617) 348-1694

FAX: (617) 542-2241

RECEIVED
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COMMISSION
OFFICE OF GENERAL
COUNSEL

JUN 12 11 11 AM '96

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.

Date

Signature

RESPONDENT'S NAME: Paul Hoiriis, Jr.

ADDRESS: 79A - 8 Broadmeadow Rd
Marlboro, MA
01752

TELEPHONE: HOME( )

BUSINESS( )

9304386137 1

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4355

NAME OF COUNSEL: Tracy A Miner

FIRM: Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.

ADDRESS: One Financial Center
Boston, MA
02111

TELEPHONE: (617) 348-1694

FAX: (617) 542-2241

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JUN 12 11 11 AM '96

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.

Date

Signature

RESPONDENT'S NAME: Richard Moeller

ADDRESS: 36 Staples Shore Rd
Lakeville, MA
02347

TELEPHONE: HOME( )

BUSINESS( )

9304386 1372

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4355

NAME OF COUNSEL: Tracy A. Miner

FIRM: Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.

ADDRESS: One Financial Center
Boston, MA
02111

TELEPHONE: (617) 348-1694

FAX: (617) 542-2241

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Jun 12 11 11 AM '96

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.

5/20/96
Date

Barbara L. Moeller
Signature

RESPONDENT'S NAME: Barbara Moeller

ADDRESS: 316 Staples Shore Rd
Lakeville, MA
02347

TELEPHONE: HOME( )

BUSINESS( )

9304386137 3

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4355

NAME OF COUNSEL: Tracy A. Miner

FIRM: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

ADDRESS: One Financial Center
Boston, MA 02111

TELEPHONE: (617) 348-1694

FAX: (617) 542-2241

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JUN 12 11 11 AM '96

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.

5/22/96 — Date

Gayle M. Block — Signature

RESPONDENT'S NAME: Gayle M. Block

ADDRESS: 351 Bolivar St. Suite J
Canton, MA 02021

TELEPHONE: HOME (617) 821-2063

BUSINESS (508) 587-5400

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Lois G. Lerner
Associate General Counsel

SUBJECT: Disgorgement of Funds Received by Dole for President, Inc. and Dole for President Compliance Committee, Inc.

Attached for the Commission's information are copies of two checks and their accompanying cover letter representing the disgorgement of $69,000 received by the Dole for President, Inc. and the Dole for President Compliance Fund, Inc. (collectively "the Dole campaign"). These disgorgements relate to the recent plea agreement between the Department of Justice and Simon Fireman in which Mr. Fireman pleaded guilty to seventy-three violations of 2 U.S.C. §§ 441(f), 441a(a)(1), 441a(a)(3), 441b(a) and 437(g)(d) because he, *inter alia*, caused $69,000 to be contributed to the Dole campaign in the name of others.

Attachment

93043961375

BOB DOLE FOR PRESIDENT

RECEIVED FEDERAL ELECTION COMMISSION OFFICE OF GENERAL COUNSEL
AUG 1 3 17 PM '96

July 31, 1996

Colleen T. Sealander, Esq.
Central Enforcement Docket
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Ms. Sealander:

The Dole campaign has reason to believe that Simon Fireman and Aqua-Liesure, Inc. entered into the attached plea agreements with the United States Attorney on July 10, 1996. These agreements indicate that Fireman and Aqua Leisure illegally caused forty-three thousand dollars in contributions to be made to Dole for President, Inc. (the "Primary Committee") and twenty-six thousand dollars in contributions to be made to Dole for President Compliance Committee, Inc. (the "Compliance Committee").

Federal law requires repayment to the United States government of an amount equal to the amount of contributions received by the campaign that were subsequently determined in a plea agreement to have been illegally made. See Advisory Opinion 1996-5. In addition, the campaign has decided to return an additional ten thousand seven hundred fifty dollars, which is an amount equal to the federal matching funds received in connection with the returned contributions. These payments will exhaust the escrow accounts, referenced in my June 4, 1996 letter to you, which the campaign established on May 8, 1996 in connection with the investigation of Aqua Leisure.

Therefore, please find enclosed two checks from the Primary Committee made payable to the United States Treasury: one in the amount of forty-three thousand dollars and one in the amount of ten thousand seven hundred fifty dollars. Also find enclosed one check from the Compliance Committee to the United States Treasury in the amount of twenty-six thousand dollars. I understand and accept that the Commission will not consider this letter to be a confidential communication.

Let me know if I can be of further assistance.

Sincerely,

Douglas C. Wurth
General Counsel

RECEIVED FEDERAL ELECTION COMMISSION OFFICE OF GENERAL COUNSEL
AUG 2 9 50 AM '96

Authorized and paid for by Dole for President, Inc., Robert Lighthizer, Treasurer
810 First Street, Northeast • Suite 300 • Washington, D.C. 20002 • (202) 414-6400

Dole For President
CONTRIBUTION REFUNDS ACCOUNT
P.O. BOX 77658
WASHINGTON, DC 20013

SIGNET BANK N.A.
ACH R&T 054000807
Washington, DC 20005

811

July 31 1996

PAY FORTY THREE THOUSAND AND 00/100* * * * * * * * * * * * * * * * * * * DOLLARS $ * *43,000.00

TO THE ORDER OF

United States Treasury
Attn: Colleen T. Sealander, Esq.
Central Enforcement Docket
Federal Election Commission
999 E Street, NW
Washington, DC 20463

⑈00000811⑈ ⑆054000807⑆ ⑈667⑈0176392⑈

Dole For President
CONTRIBUTION REFUNDS ACCOUNT
WASHINGTON, DC 20013

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW
IF NOT CORRECT, PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED

DATE	DESCRIPTION	AMOUNT
7/31/96	Contribution Refunds	$43,000.00

9304336 1

ATTACHMENT 1
Page 2 of 2

DOLE FOR PRESIDENT
COMPLIANCE CONTRIBUTION REFUND ACCOUNT
P.O. BOX 77658
WASHINGTON, DC 20013

SIGNET BANK N.A.
ACH R&T 054000807
Washington, DC 20006

1153

July 31 19 96

15-80/540
3642

PAY TWENTY SIX THOUSAND AND 00/100* * * * * * * * * * * * * * * * * * * DOLLARS $ * *26,000.00

TO THE ORDER OF

United States Treasury
Attn: Colleen T. Sealander, Esq.
Central Enforcement Docket
Federal Election Commission
999 E Street, NW
Washington, DC 20463

⑈00001153⑈ ⑆054000807⑆ ⑈667⑈018081 6⑈

DOLE FOR PRESIDENT
COMPLIANCE CONTRIBUTION REFUND ACCOUNT
WASHINGTON, DC 20013

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW
IF NOT CORRECT, PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED

DATE	DESCRIPTION	AMOUNT
7/31/96	Contribution Refunds	$26,000.00

ATTACHMENT 1
Page 2 of 3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 1, 1996

TWO WAY MEMORANDUM

TO: OGC, Docket

FROM: Rosa E. Swinton
Accounting Technician

SUBJECT: Account Determination for Funds Received

We recently received a check from Dole for President, check number 311, dated 7/31/96, and in the amount of $43,000.00. Attached is a copy of the check and any correspondence that was forwarded. Please indicate below the account into which it should be deposited, and the MUR number and name.

TO: Rosa E. Swinton
Accounting Technician

FROM: OGC, Docket

In reference to the above check in the amount of $43,000.00, the MUR number is 4355 and in the name of Dole for President. The account into which it should be deposited is indicated below:

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

__ Civil Penalties Account, 95-1099.160

✓ Other: Miscellaneous (Disgorgement)

Signature

8/2/96
Date

9304386137 9

Dole For President
CONTRIBUTION REFUNDS ACCOUNT
P.O. BOX 77658
WASHINGTON, DC 20013

SIGNET BANK N.A.
ACH R&T 054000807
Washington DC 20006

811

July 31 1996

15 80 540
3842

PAY FORTY THREE THOUSAND AND 00/100* * * * * * * * * * * * * * * * * * * DOLLARS $ * *43,000.00

TO THE ORDER OF

United States Treasury
Attn: Colleen T. Sealander, Esq.
Central Enforcement Docket
Federal Election Commission
999 E Street, NW
Washington, DC 20463

⑈00000811⑈ ⑆054000807⑆ ⑈667⑈0176392⑈

Dole For President
CONTRIBUTION REFUNDS ACCOUNT
WASHINGTON, DC 20013

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW
IF NOT CORRECT, PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED

DATE	DESCRIPTION	AMOUNT
7/31/96	Contribution Refunds	$43,000.00

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 1, 1996

TWO WAY MEMORANDUM

TO: OGC, Docket

FROM: Rosa E. Swinton
Accounting Technician

SUBJECT: Account Determination for Funds Received

We recently received a check from Dole for President, check number 1153, dated 7/31/96, and in the amount of $26,000.00. Attached is a copy of the check and any correspondence that was forwarded. Please indicate below the account into which it should be deposited, and the MUR number and name.

==========

TO: Rosa E. Swinton
Accounting Technician

FROM: OGC, Docket aa

In reference to the above check in the amount of $26,000.00, the MUR number is 4355 and in the name of Dole for President. The account into which it should be deposited is indicated below:

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

__ Civil Penalties Account, 95-1099.160

✓ Other: Miscellaneous (Disgorgement)

Signature

8/2/96
Date

9304361331

DOLE FOR PRESIDENT
COMPLIANCE CONTRIBUTION REFUND ACCOUNT
P.O. BOX 77658
WASHINGTON, DC 20013

SIGNET BANK N.A.
ACH R&T 054000807
Washington, DC 20006

1153

July 31 19 96

15-80/540
3842

PAY TWENTY SIX THOUSAND AND 00/100* * * * * * * * * * * * * * * * * * * DOLLARS $ * *26,000.00

TO THE ORDER OF

United States Treasury
Attn: Colleen T. Sealander, Esq.
Central Enforcement Docket
Federal Election Commission
999 E Street, NW
Washington, DC 20463

⑥ ① ③ ③ ②

⑈00001153⑈ ⑆054000807⑆ ⑈667⑈018081 6⑈

DOLE FOR PRESIDENT
COMPLIANCE CONTRIBUTION REFUND ACCOUNT
WASHINGTON, DC 20013

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW
IF NOT CORRECT, PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED

DATE	DESCRIPTION	AMOUNT
7/31/96	Contribution Refunds	$26,000.00

9 8 0 4

U.S. Department of Justice

United States Attorney
District of Massachusetts

1003 J.W. McCormack Post Office and Courthouse
Boston, Massachusetts 02109

June 26, 1996

Thomas E. Dwyer, Esquire
A. John Pappalardo, Esq.
Dwyer & Collora
400 Atlantic Avenue
Boston, Massachusetts 02110

Re: Simon C. Fireman

Gentlemen:

This letter sets forth the agreement entered into between the United States Attorney for the District of Massachusetts ("the U.S. Attorney") and your client, Simon C. Fireman ("Defendant"). The agreement is as follows:

1. Plea

Defendant will plead guilty to counts 1 through 8 and counts 71 through 73 of a 74 count Information charging in Count One a violation of 18 U.S.C. § 371 (conspiracy to (1) structure currency transactions and (2) impair, impede and obstruct the FEC) and 73 violations of Title 2, U.S.C. §§ 441(f), 441a(a)(1), 441a(a)(3), 441b(a) and 437(g)(d). This plea agreement concludes federal criminal prosecution of Mr. Fireman for any and all matters of which the United States Attorney's office is presently aware.

2. Maximum Penalties

The maximum penalty for Count One is five years incarceration and a $250,000 fine. The maximum penalty for each of counts 2 through 8 and 71 through 73 is one-year incarceration and a $100,000 fine.

3. Sentencing Guidelines

The parties agree that the appropriate guideline range for Count 1 is 6 - 12 months, $2,000 - $20,000 fine. The parties agree that the guidelines do not apply to Counts 2 through 8 and 71 through 73 except as noted in U.S.S.G. § 2X5.1 and 18 U.S.C §

3553(b).

This guideline is premised upon a criminal history category of I.

Nothing herein shall be construed to limit the right of either party to appeal the sentence pursuant to 18 U.S.C. § 3742.

4. Binding Plea Agreement/Sentence Recommendation

Mr. Fireman's plea will be tendered pursuant to Fed. R. Crim. P. 11(e)(1)(C). Mr. Fireman reserves all rights set forth in Fed. R. Crim P. 11(e)(3) and (4). The parties agree that the appropriate sentence is confinement for a period of six months, a total fine of $1 million, a special assessment of $300 and no order of restitution. The United States will recommend that the sentence of confinement be served as a term of imprisonment at a federal correctional institution pursuant to U.S.S.G. §5C1.1(c)(1) to be followed by a period of two years supervised release. The defendant will oppose the government's recommendation and recommend that the sentence be one-year probation, with a condition requiring a six-month period of home detention pursuant to U.S.S.G. §5C1.1(c)(3).

5. Probation Department Not Bound by Agreement

The sentencing disposition agreed upon by the parties and their respective calculations under the Sentencing Guidelines are not binding upon the United States Probation Department. Defendant's plea will be tendered pursuant to Fed. R. Crim. P. 11(e)(1)(C). Defendant cannot withdraw his plea of guilty unless the sentencing judge rejects the plea agreement. If the sentencing judge rejects the plea agreement, this agreement shall be null and void at the option of either the United States or the Defendant. In this regard, the Defendant hereby waives any defense to any charges which he might otherwise have under any statute of limitations or the Speedy Trial Act.

6. Mandatory Special Assessment\Fine

Defendant agrees to pay the mandatory special assessment to the Clerk of the Court on or before the date of sentencing, unless affirmatively relieved of this obligation by the District Court. Defendant agrees to pay the fine in full within 14 days of sentencing.

7. Civil Liability

By entering into this agreement, the U.S. Attorney does not compromise any civil liability, including but not limited to any tax liability or liability with the Federal Election Commission, which Defendant may have incurred or may incur as a result of his conduct and his plea of guilty to the charges specified in paragraph one of this agreement.

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8. Withdrawal of Plea Agreement

Should Defendant's guilty plea later be withdrawn on motion of Defendant, this agreement shall be null and void at the option of the U.S. Attorney.

9. Breach of Agreement

If the U.S. Attorney determines that Defendant has failed to comply with any provision of this agreement, or has committed any crime during the pendency of this Agreement, the U.S. Attorney may, at his sole option, be released from his commitments under this agreement in their entirety by notifying Defendant, through counsel or otherwise, in writing. The U.S. Attorney may also pursue all remedies available to him under the law, irrespective of whether he elects to be released from his commitments under this agreement. Defendant recognizes that no such breach by him of an obligation under this agreement shall give rise to grounds for withdrawal of his guilty plea. Defendant understands that should be breach any provision of this agreement, the government will have the right to use against Defendant before any grand jury, at any trial, hearing or for sentencing purposes, any statements made by him, and any information, materials, documents or objects provided by him to the government pursuant to this agreement without any limitation. In this regard, the Defendant hereby waives any defense to any charges which he might otherwise have under any statute of limitations or the Speedy Trial Act.

10. Who Is Bound By Agreement

This agreement is limited to the United States Attorney for the District of Massachusetts, and cannot and does not bind the Attorney General of the United States or any other federal, state or local prosecutive authorities.

11. Complete Agreement

This agreement is the complete and only agreement between the parties. No promises, agreements or conditions have been entered into other than those set forth in this letter. This agreement supersedes prior understandings, if any, of the parties, whether written or oral. This agreement cannot be

modified other than in a written memorandum signed by the parties or on the record in court.

If this letter accurately reflects the agreement entered into between the United States Attorney for the District of Massachusetts and Defendant, please have Defendant sign the Acknowledgment of Plea Agreement below. Please also sign below as Witness. Return the original of this letter to Assistant U.S. Attorney Joseph F. Savage, Jr.

Sincerely,

DONALD K. STERN
United States Attorney

By: James B. Farmer

JAMES B. FARMER
Chief, Criminal Division

STEPHEN P. HEYMANN
Deputy Chief, Criminal Division

JOSEPH F. SAVAGE, JR.
Chief, Pub. Corr. & Spec. Pros. Unit

ACKNOWLEDGMENT OF PLEA AGREEMENT

I have read this letter of agreement in its entirety and discussed it with my attorney. I hereby acknowledge that it fully sets forth my agreement with the United States Attorney's office for the District of Massachusetts. I further state that there have been no additional promises or representations made to me by any officials of the United States in connection with this matter.

SIMON C. FIRMAN

Date: JUNE 26, 1986

I certify that this plea agreement letter has been read by the Defendant and that the Defendant has stated that he understands its terms.

Witnessed by:

A. JOHN PAPPALARDO, ESQUIRE
MICHAEL I. DUFFY, ESQUIRE
Attorneys for SIMON C. FIRMAN

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United States Attorney
District of Massachusetts

1003 J.W. McCormack Post Office and Courthouse
Boston, Massachusetts 02109

June 26, 1996

Robert Sherman, Esquire
Hutchins, Wheeler & Ditmar
101 Federal Street
Boston, Massachusetts 02110

Re: Aqua Leisure Industries, Inc.

Dear Mr. Sherman:

This letter sets forth the agreement entered into between the United States Attorney for the District of Massachusetts ("the U.S. Attorney") and your client, Aqua Leisure Industries, Inc. ("Defendant"). The agreement is as follows:

1. Plea

Defendant will plead guilty to counts two through seventy and count seventy-four of an Information charging violations of Title 2, U.S.C. §§ 441f, 441b(a) and 437g(d). This plea agreement will conclude federal criminal prosecution of the defendant for any and all matters of which the United States Attorney's office is presently aware.

2. Maximum Penalties

The maximum penalty for each count is a $100,000 fine.

3. Sentencing Guidelines

The parties agree that the guidelines do not apply except as noted in U.S.S.G. § 8C2.1 and 18 U.S.C §§ 3553 and 3572.

Nothing herein shall be construed to limit the right of either party to appeal the sentence pursuant to 18 U.S.C. § 3742.

4. Binding Plea Agreement/Sentence Recommendation

Defendant's plea will be tendered pursuant to Fed. R. Crim. P. 11(e)(1)(C). Defendant reserves all rights set forth in Fed. R. Crim. P. 11(e)(3) and (4). The parties agree that the

appropriate sentence is a total fine of $5 million, a special assessment of $1725, a period of four years probation and no order of restitution. The fine shall be paid as follows: $1 million within 14 days of imposition of sentence and then eight payments of $500,000 each at six month intervals beginning six months after imposition of sentence.

The parties agree, pursuant to 18 U.S.C. § 3572(d), that in the interests of justice this payment schedule is appropriate. The parties also agree, pursuant to 18 U.S.C. § 3612(f)(3)(A) and in light of Defendant's financial condition, that the requirement of interest should be waived as to each of the eight installment payments due after the time of sentencing; provided, however, that the waiver of interest as to each of these installment payments will extend only to the due date, and pursuant to 18 U.S.C. § 3612(f), interest will accrue as of the due date on any part of any such payment which remains unpaid as of the fifteenth day after the due date.

5. Probation Department Not Bound By Agreement

The sentencing disposition agreed upon by the parties and their respective calculations under the Sentencing Guidelines are not binding upon the United States Probation Department. Defendant's plea will be tendered pursuant to Fed. R. Crim. P. 11(e)(1)(C). Defendant cannot withdraw its plea of guilty unless the sentencing judge rejects the plea agreement. If the sentencing judge rejects the plea agreement, this agreement shall be null and void at the option of either the United States or the Defendant. In this regard, the Defendant hereby waives any defense to any charges which it might otherwise have under any statute of limitations or the Speedy Trial Act.

6. Mandatory Special Assessment

Defendant agrees to pay the mandatory special assessment to the Clerk of the Court on or before the date of sentencing, unless affirmatively relieved of this obligation by the District Court.

7. Civil Liability

By entering into this agreement, the U.S. Attorney does not compromise any civil liability, including but not limited to any tax liability or liability with the Federal Election Commission, which Defendant may have incurred or may incur as a result of its conduct and its plea of guilty to the charges specified in paragraph one of this agreement. To the extent civil sanctions are imposed that cause the Defendant not to have the ability to pay the fine, Defendant may petition the Court pursuant to Title 18 U.S.C. § 3614.

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8. Withdrawal of Plea Agreement

Should Defendant's guilty plea later be withdrawn on motion of Defendant, this agreement shall be null and void at the option of the U.S. Attorney.

9. Breach of Agreement

If the U.S. Attorney determines that Defendant has failed to comply with any provision of this agreement, or has committed any crime during the pendency of this Agreement, the U.S. Attorney may, at his sole option, be released from his commitments under this agreement in their entirety by notifying Defendant, through counsel or otherwise, in writing. The U.S. Attorney may also pursue all remedies available to him under the law, irrespective of whether he elects to be released from his commitments under this agreement. Defendant recognizes that no such breach by it of an obligation under this agreement shall give rise to grounds for withdrawal of its guilty plea. Defendant understands that should it breach any provision of this agreement, the government will have the right to use against Defendant before any grand jury, at any trial, hearing or for sentencing purposes, any statements made by it, and any information, materials, documents or objects provided by it to the government pursuant to this agreement without any limitation. In this regard, the Defendant hereby waives any defense to any charges which it might otherwise have under any statute of limitations or the Speedy Trial Act.

10. Who Is Bound By Agreement

This agreement is limited to the United States Attorney for the District of Massachusetts, and cannot and does not bind the Attorney General of the United States or any other federal, state or local prosecutive authorities.

11. Complete Agreement

This agreement is the complete and only agreement between the parties. No promises, agreements or conditions have been entered into other than those set forth in this letter. This agreement supersedes prior understandings, if any, of the parties, whether written or oral. This agreement cannot be modified other than in a written memorandum signed by the parties or on the record in court.

If this letter accurately reflects the agreement entered into between the United States Attorney for the District of Massachusetts and Defendant, please have Defendant sign the

Acknowledgment of Plea Agreement below. Please also sign below as Witness. Return the original of this letter to Assistant U.S. Attorney Joseph F. Savage, Jr.

Sincerely,

DONALD K. STERN
United States Attorney

By: James B. Farmer

JAMES B. FARMER
Chief, Criminal Division

STEPHEN P. HEYMANN
Deputy Chief, Criminal Division

JOSEPH F. SAVAGE, JR.
Chief, Pub. Corr. & Spec. Pros. Unit

ACKNOWLEDGMENT OF PLEA AGREEMENT

I have read this letter of agreement in its entirety and discussed it with my attorney. I hereby acknowledge that it fully sets forth my agreement with the United States Attorney's Office for the District of Massachusetts. I further state that there have been no additional promises or representations made to me by any officials of the United States in connection with this matter.

Albert P. [illegible]
Authorized Representative of
Aqua Leisure Industries, Inc.

Date: 6/26/96

I certify that this plea agreement letter has been read by the Defendant and that the Defendant has stated that he understands its terms.

Witnessed by:
Robert [illegible], Esquire
Attorney for Aqua Leisure Industries, Inc.

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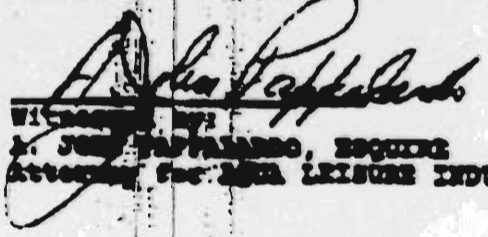
ACKNOWLEDGMENT OF PLEA AGREEMENT

I have read this letter of agreement in its entirety and discussed it with my attorney. I hereby acknowledge that it fully sets forth my agreement with the United States Attorney's Office for the District of Massachusetts. I further state that there have been no additional promises or representations made to me by any officials of the United States in connection with this matter.

[redacted]
AGWA LEISURE INDUSTRIES, INC.

Date: _____

I certify that this plea agreement letter has been read by the Defendant and that the Defendant has stated that he understands its terms.



Witnessed by:
A. JOHN PAPALIANO, ESQUIRE
Attorney for AGWA LEISURE INDUSTRIES, INC.

U.S. Department of Justice

United States Attorney
District of Massachusetts

1003 J.W. McCormack Post Office and Courthouse
Boston, Massachusetts 02109

July 9, 1996

Martin Leppo, Esq.
Leppo & Leppo
15 South Main Street
Randolph, Massachusetts 02368

Re: Carol A. Nichols

Dear Mr. Leppo:

This letter sets forth the agreement entered into between the United States Attorney for the District of Massachusetts ("the U.S. Attorney") and your client, Carol A. Nichols ("Defendant"). The agreement is as follows:

1. Plea

Defendant will plead guilty to an Information charging a violation of 18 U.S.C. § 371 (conspiracy to (1) structure currency transactions and (2) impair, impede and obstruct the FEC).

2. Maximum Penalties

The maximum penalty for Count One is five years incarceration and/or $250,000 fine.

3. Sentencing Guidelines

The parties agree that the appropriate guideline range for Count 1 is 0 - 6 months, $1,000 - $10,000 fine.

This guideline is premised upon a criminal history category of I.

Nothing herein shall be construed to limit the right of either party to appeal the sentence pursuant to 18 U.S.C. § 3742.

4. Binding Plea Agreement/Sentence Recommendation

Ms. Nichols's plea will be tendered pursuant to Fed. R. Crim. P. 11(e)(1)(C). Ms. Nichols reserves all rights set forth in Fed. R. Crim. P. 11(e)(3) and (4). The parties agree that the

appropriate sentence is one year probation, a $7,500 fine, a special assessment of $50, and no order of restitution. The United States will recommend that the court impose a period of home confinement as a condition of probation. The defendant will oppose this recommendation.

5. Mandatory Special Assessment

Defendant agrees to pay the mandatory special assessment to the Clerk of the Court on or before the date of sentencing, unless affirmatively relieved of this obligation by the District Court.

6. Civil Liability

By entering into this agreement, the U.S. Attorney does not compromise any civil liability, including but not limited to any tax liability or liability with the Federal Election Commission, which Defendant may have incurred or may incur as a result of her conduct and her plea of guilty to the charges specified in paragraph one of this agreement.

7. Rejection of Plea By Court

Should Ms. Nichols's guilty plea not be accepted by the Court for whatever reason, or later be withdrawn on motion of Ms. Nichols, this agreement shall be null and void at the option of the United States or pursuant to Fed. R. Crim. Pro. 11(e)(1)(C).

8. Breach of Agreement

If the U.S. Attorney determines that Defendant has failed to comply with any provision of this agreement, or has committed any crime during the pendency of this Agreement, the U.S. Attorney may, at his sole option, be released from his commitments under this agreement in their entirety by notifying Defendant, through counsel or otherwise, in writing. The U.S. Attorney may also pursue all remedies available to him under the law, irrespective of whether he elects to be released from his commitments under this agreement. Defendant recognizes that no such breach by her of an obligation under this agreement shall give rise to grounds for withdrawal of her guilty plea. Defendant understands that should she breach any provision of this agreement, the government will have the right to use against Defendant before any grand jury, at any trial, hearing or for sentencing purposes, any statements made by her, and any information, materials, documents or objects provided by her to the government pursuant to this agreement without any limitation. In this regard, the Defendant hereby waives any defense to any charges which she might otherwise have under any statute of limitations or the Speedy Trial Act.

9. Probation Department Not Bound by Agreement

The sentencing disposition agreed upon by the parties and their respective calculations under the Sentencing Guidelines are not binding upon the United States Probation Department. Defendant's plea will be tendered pursuant to Fed. R. Crim. P. 11(e)(1)(C). Defendant cannot withdraw her plea of guilty unless the sentencing judge rejects the plea agreement. If the sentencing judge rejects the plea agreement, this agreement shall be null and void at the option of either the United States or the Defendant. In this regard, the Defendant hereby waives any defense to any charges which she might otherwise have under any statute of limitations or the Speedy Trial Act.

10. Who Is Bound By Agreement

This agreement is limited to the United States Attorney for the District of Massachusetts, and cannot and does not bind the Attorney General of the United States or any other federal, state or local prosecutive authorities.

11. Complete Agreement

This agreement is the complete and only agreement between the parties. No promises, agreements or conditions have been entered into other than those set forth in this letter. This agreement supersedes prior understandings, if any, of the parties, whether written or oral. This agreement cannot be modified other than in a written memorandum signed by the parties or on the record in court.

If this letter accurately reflects the agreement entered into between the United States Attorney for the District of Massachusetts and Defendant, please have Defendant sign the Acknowledgment of Plea Agreement below. Please also sign below as Witness. Return the original of this letter to Assistant U.S. Attorney Joseph F. Savage, Jr.

Sincerely,

DONALD K. STERN
United States Attorney

By: James B. Farmer
JAMES B. FARMER
Chief, Criminal Division

STEPHEN P. HEYMANN
Deputy Chief, Criminal Division

JOSEPH F. SAVAGE, JR.
Chief, Pub. Corr. & Spec. Pros. Unit

ACKNOWLEDGMENT OF PLEA AGREEMENT

I have read this letter of agreement in its entirety and discussed it with my attorney. I hereby acknowledge that it fully sets forth my agreement with the United States Attorney's Office for the District of Massachusetts. I further state that there have been no additional promises or representations made to me by any officials of the United States in connection with this matter.

CAROL A. NICHOLS

Date: July 9, 1996

I certify that this plea agreement letter has been read by the Defendant and that the Defendant has stated that she understands its terms.

Witnessed by:
MARTIN LEPPO, ESQUIRE
Attorney for CAROL A. NICHOLS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	CR. NO. _____
	)	
v.	)	VIOLATIONS:
	)	
SIMON C. FIREMAN,	)	18 U.S.C. § 371: Conspiracy
CAROL A. NICHOLS, and	)	to Commit Federal Offenses
AQUA-LEISURE INDUSTRIES, INC.	)	2 U.S.C. §§ 441f and
Defendants	)	437g(d); Disguised Campaign
	)	Contributions
	)	2 U.S.C. §§ 441a(a)(1) and
	)	437g(d); Contributions in
	)	Excess of $1,000 Statutory
	)	Limit
	)	2 U.S.C. §§ 441a(a)(3) and
	)	437g(d); Contributions in
	)	Excess of $25,000 Statutory
	)	Limit
	)	2 U.S.C. §§441b(a) and
	)	437g(d); Contributions
	)	Prohibited by Corporation

I N F O R M A T I O N

The United States Attorney Charges:

COUNT ONE

[18 U.S.C. § 371: Conspiracy to Commit Federal Offenses]

At all times relevant to this Information:

Preliminary Allegations

1. The Congress enacted certain federal laws designed to limit the influence of money in the selection of federal elected officials. The laws set maximum amounts that could be contributed by individuals, prohibited some kinds of contributions - such as corporate contributions and contributions by foreign nationals - and required full and complete disclosure of the identity of all contributors to allow the public to

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evaluate the source of a candidate's financial support.

2. The federal laws also generally require that large cash transactions (more than $10,000) at financial institutions be reported to the Internal Revenue Service ("IRS") and prohibit anyone from structuring cash transactions in such a way as to attempt to avoid the reporting requirement. The laws are designed to discourage and reveal criminal offenses involving cash.

3. Defendant SIMON C. FIREMAN controls Aqua-Leisure Industries, Inc., (ALII) a distributor of swimming pool equipment based in Avon, Massachusetts. Defendant CAROL A. NICHOLS is employed at Aqua-Leisure Industries, Inc., essentially as the special assistant to defendant SIMON C. FIREMAN.

4. From in or about late 1991 until the date of this information, in connection with two United States presidential election campaigns, one Congressional campaign and fundraising by a national political party, defendant SIMON C. FIREMAN, primarily through defendant CAROL A. NICHOLS, designed and implemented a criminal scheme. Namely, from 1991-1995, SIMON C. FIREMAN and CAROL A. NICHOLS obtained funds from Hong Kong, through a secret trust and converted the money to cash. SIMON C. FIREMAN and CAROL A. NICHOLS then funneled this and other money totalling more than $120,000, to the presidential campaigns of George Bush and Robert Dole through individuals employed at ALII and others who provided contribution checks as if they had contributed their own money when, in fact, they had been given cash to contribute.

SIMON C. FIREMAN and CAROL A. NICHOLS also caused other individuals to violate the campaign laws in order to provide "conduit" contributions to these presidential candidates. Defendants SIMON C. FIREMAN and CAROL A. NICHOLS also caused conduit contributions to be made to programs associated with the Republic National Committee in 1992 and to the reelection campaign of Congressman Joseph Kennedy in 1993.

5. The Election Act required political committees to file with the FEC periodic reports, which were required to list each individual and entity which contributed an aggregate of $200 or more to the political committee in any given calendar year, together with the date and the amount of any such contribution.

6. The Election Act prohibited individuals:

a. from contributing more than $1000 to any federal candidate and more than $1000 to any federal candidate's "compliance" committee in connection with any given election (primary or general election); and

b. from contributing more than a total of $25,000 to any group of candidates or committees in any calendar year or in any election; and

c. from contributing, or causing a contribution to be made, in the name of another individual, that is, a "conduit."

7. Under the Election Act, any contribution that was made through an intermediary or "conduit" was considered a contribution from the person or entity providing the money to the intermediary or conduit.

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8. The FEC was and is the agency of the United States government responsible for enforcing the reporting requirements of the Election Act, and for detection, investigation and institution of enforcement action against violations of the Election Act. In addition, the FEC was and is responsible for making available to the public specific information about the amounts and sources of political contributions to federal candidates.

9. One goal and objective, among others, of SIMON C. FIREMAN'S secret scheme to funnel money to the presidential campaign of Robert Dole was to obtain for SIMON C. FIREMAN a position with the United States government.

A. Introduction to the Bush-Quayle Scheme

1. Defendants SIMON C. FIREMAN and CAROL A. NICHOLS conspired together and with others to make secret, disguised and illegal campaign contributions to the Bush-Quayle '92 Primary Committee, Inc. and Bush-Quayle '92 Compliance Committee, Inc. ("Bush-Quayle Committees") without detection by the Federal Election Commission ("FEC") or the voting public.

2. In 1991 and 1992 George Bush and Dan Quayle were running for re-election as President and Vice-President of the United States, respectively.

3. The Bush-Quayle Committees were subject to the reporting provisions and the campaign financing limitations of the Federal Election Campaign Act ("The Election Act").

4. During late 1991 and early 1992, defendants SIMON C. FIREMAN and CAROL A. NICHOLS provided cash to individuals in order for them to make contributions to the Bush-Quayle campaign.

B. Introduction to the Republican National Committee Scheme

1. During the 1992 Presidential Election campaign, the Republican National Committee engaged in various fundraising "programs" to raise money for "party building" and other expenses. These programs involved, among others, "Victory 1992" and "The Presidential Trust."

2. The Republican National Committee undertook a reporting obligation to the FEC regarding these programs.

3. In October, 1992 an event was held in Boston, Massachusetts to raise funds for the Republican National Committee programs.

4. In or about the fall, 1992 up to the October, 1992 event, CAROL A. NICHOLS and SIMON C. FIREMAN funneled a total of at least $24,000 in cash to six individuals who then each made $4,000 "conduit" contributions to the Republican National Committee programs.

5. In or about late 1992, the Republican National Committee filed a false report with the FEC that reflected the six individuals were the true donors of the "conduit" funds that had been funneled from CAROL A. NICHOLS and SIMON C. FIREMAN.

C. Introduction to the Citizens for Joe Kennedy for Congress Scheme

1. During 1993 the Citizens for Joe Kennedy Committee was

engaged in fundraising activities and was subject to the limitations and reporting requirements of FECA.

2. In or about August, 1993 CAROL A. NICHOLS and SIMON C. FIREMAN funneled at least $6,000 in cash to six individuals who then each made $1,000 "conduit" contributions to the Citizens for Joe Kennedy Committee.

3. In or about August, 1993 the Citizens for Joe Kennedy Committee filed a false report with the FEC that reflected the six individuals were the true donors of the funds that had been funneled to them from CAROL A. NICHOLS and SIMON C. FIREMAN.

D. Introduction to the Dole for President Scheme

1. Defendants SIMON C. FIREMAN and CAROL A. NICHOLS conspired with others to make illegal campaign contributions to the Dole for President Committee, Inc. and the Dole for President Compliance Committee, Inc. ("Dole Committees") without detection by the Federal Election Commission ("FEC") or the voting public.

2. In 1995 and 1996 Robert Dole was a candidate for President of the United States.

3. The Dole Committees were each subject to the reporting provisions and the campaign financing limitations of the Federal Election Campaign Act ("The Election Act").

4. During 1995, SIMON C. FIREMAN and CAROL A. NICHOLS caused approximately $69,000 to be donated to the Dole campaigns in the form of conduit contributions.

E. Objects of the Conspiracy

Beginning in or about late 1991, and continuing thereafter

to on or about the date of this Information, in Avon and elsewhere in the District of Massachusetts, and elsewhere, defendants SIMON C. FIREMAN and CAROL A. NICHOLS, and others both known and unknown to the United States Attorney, combined, agreed and conspired together:

(a) to defraud the United States by impairing, impeding, defeating and obstructing the lawful functions of the FEC;

(b) to knowingly and willfully make contributions and cause contributions to be made to the Bush-Quayle Committees, the Republican National Committee, the Citizens for Joe Kennedy Committee and the Dole Committees, in the name of third persons ("conduits"), in violation of Title 2, United States Code, Section 441(f);

(c) to knowingly and willfully evade the statutory financial transaction reporting requirements, and the regulations promulgated thereunder, by structuring and assisting in structuring a currency transaction with a domestic financial institution such that it was not reported to the U.S. Government, in violation of Title 31, United States Code, Sections 5313(a), 5322 and 5324.

F. <u>The Means of the Conspiracy</u>

The events underlying and the means and methods used to accomplish this conspiracy were as follows:

1. In or about 1985 SIMON C. FIREMAN caused an entity known as "Rickwood, Ltd." ("Rickwood") to be formed in Hong Kong. Individuals employed by SIMON C. FIREMAN were made "trustees" of

Rickwood and were told by SIMON C. FIREMAN that the purpose of Rickwood and their role with Rickwood was to make certain expenditures for the benefit of SIMON C. FIREMAN that SIMON C. FIREMAN wished to conceal.

2. From in or about 1985 until the date of this information, Rickwood maintained a bank account in the United States and received wire transfers of funds from Hong Kong. Funds were, thereafter, disbursed from Rickwood at SIMON C. FIREMAN's general and specific instruction. The bank statements were sent to the home address of the employees of SIMON C. FIREMAN who acted as trustees. In or about 1989, defendant SIMON C. FIREMAN made defendant CAROL A. NICHOLS a trustee of Rickwood.

3. Defendant SIMON C. FIREMAN caused defendant CAROL A. NICHOLS to give cash to individuals (hereinafter referred to as "conduits") and instructed these "conduits" to "contribute" money in their own names by personal checks in the amount of $1,000 each, to one or more of the Bush-Quayle Committees, Republican National Committee programs, the Citizens for Joe Kennedy Committee, and the Dole for President Committees.

5. Defendants SIMON C. FIREMAN and CAROL A. NICHOLS also caused and assisted another individual known to the United States Attorney to give money belonging to him and his business to his own set of "conduits" who would "contribute" the money in their own names to the Bush-Quayle Committees and Dole for President Committees. Defendants SIMON C. FIREMAN and CAROL A. NICHOLS then collected these "conduits" checks and caused them to be

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donated to the Bush-Quayle Committees and the Dole for President Committees.

6. Defendants SIMON C. FIREMAN and CAROL A. NICHOLS caused false representations to be made to the FEC, specifically, documents from the Bush-Quayle Committees, Republican National Committee, Citizens for Joe Kennedy Committee and Dole for President Committees indicating that all the "conduits" were the true source of the contributions to the Committees, whereas these persons had not contributed their own money to the committees.

G. Overt Acts

In furtherance of the conspiracy and to accomplish its unlawful objectives, defendants SIMON C. FIREMAN and CAROL A. NICHOLS and others both known and unknown to the United States Attorney committed various overt acts in the District of Massachusetts, and elsewhere, among which were the following:

a. On various dates in late 1991 and early 1992, CAROL A. NICHOLS provided cash to individuals so that they would make disguised contributions to the Bush-Quayle Committees.

b. On various dates in late 1991 and early 1992, SIMON C. FIREMAN met with an individual known to the grand jury and caused that individual to cause others to make "conduits" contributions to the Bush-Quayle committees.

c. In or about early 1992, SIMON C. FIREMAN caused $10,000 to be loaned to an individual to permit him to make illegal "conduit" contributions in a manner that SIMON C. FIREMAN had personally explained to him.

d. In October, 1992 an event was held in Boston, Massachusetts to raise funds for the Republican National Committee programs.

e. In or about the fall, 1992 up to the October event, defendants SIMON C. FIREMAN and CAROL A. NICHOLS funneled a total of at least $24,000 in cash to six individuals who then each made $4,000 "nonduit" contributions to the Republican National Committee programs.

f. On various dates in 1992, CAROL A. NICHOLS and SIMON C. FIREMAN, by providing checks from "conduits" to the Bush-Quayle Committees and Republican National Committees, caused the Bush-Quayle Committees and the Republican National Committees to provide false information to the FEC about the true identity of the donors.

g. In August, 1993 an event was held in Massachusetts to raise funds for the Citizens for Joe Kennedy Committee and the defendants caused $6000 in conduit contributions to be made.

h. On various dates in early 1995 and in mid-1995, CAROL A. NICHOLS provided cash to individuals to permit them to make disguised "conduit" donations to the Dole Committees.

i. On various dates in mid-1995, CAROL A. NICHOLS and SIMON C. FIREMAN caused funds to be wire transferred from Hong Kong to a bank account of Rickwood.

j. On various dates between June and August 1995, CAROL A. NICHOLS and SIMON C. FIREMAN caused $38,800 in cash to be withdrawn from the Rickwood bank account in a fashion structured

to avoid detection and reporting by the bank.

k. On various dates in early 1995 and in mid-1995, SIMON C. FIREMAN met with an individual known to the United States Attorney and caused that individual and his business to make and to cause others to make conduit contributions to the Dole committees.

l. On or about July 10, 1995, SIMON C. FIREMAN caused $13,000 from ALII to be loaned to a individual to permit him and his business to make illegal conduit contributions in a manner that SIMON C. FIREMAN had personally explained to him.

m. On or about July 17, 1995, the individual referred to in overt act (l) provided thirteen checks of $1000 each from conduit donors to CAROL A. NICHOLS to provide to the Dole committees as part of SIMON C. FIREMAN's illegal fundraising effort.

n. On various dates in 1995, SIMON C. FIREMAN and CAROL A. NICHOLS caused the Dole Committees to record false information about the true donors and report that information to the FEC.

All in violation of Title 18, United States Code, Section 371.

The United States Attorney Further Charges:

COUNTS TWO THROUGH SEVENTY

[2 U.S.C. §§441f and 437g(d): Contributions In the Name of an Individual Other Than the True Donor]

1. The Dole for President Committee, Inc. and the Dole for President Compliance Committee, Inc. were political committees registered with the FEC.

2. During the calendar year 1995, defendants SIMON C. FIREMAN and AQUA-LEISURE INDUSTRIES, INC. made and caused to be made illegal campaign contributions aggregating more than $2,000 to each of these committees.

3. On or about the dates listed below, in the District of Massachusetts, SIMON C. FIREMAN, defendant herein as to Counts 2 through 8 and AQUA-LEISURE INDUSTRIES INC., defendant herein as to Counts 2 through 70, knowingly and willfully made and caused to be made contributions in violation of the Federal Election Campaign Act, namely contributions to the Dole for President Committee, Inc. and the Dole for President Compliance Committee, Inc. in the name of the individuals as listed below rather than in the name of the true source of the contribution:

Count	Name of "Conduit" Donor	Committee	Amount	Date of check
2	Steven Berenson	Dole for President, Inc.	$1000	1/15/95

3	Paul Hoiriis	Dole for President Compliance, Inc.	$1000	2/4/95
4	William L. Nichols	Dole for President, Inc.	$1000	2/13/95
5	Gayle M. Block	Dole for President, Inc.	$1000	2/15/95
6	Mary R. Nichols	Dole for President, Inc.	$1000	2/15/95
7	Karen M. Roberts	Dole for President, Inc.	$1000	2/15/95
8	Diane M. Alfano	Dole for President, Inc.	$1000	2/16/95
9	Mary DiRado	Dole for President, Inc.	$1000	2/16/95
10	Victor DiRado	Dole for President, Inc.	$1000	2/16/95
11	Carole A. Hand	Dole for President, Inc.	$1000	2/16/95
12	Walter A. Hand	Dole for President, Inc.	$1000	2/16/95
13	Cheryl A. Joy	Dole for President, Inc.	$1000	2/16/95
14	Thomas A. Keane	Dole for President, Inc.	$1000	2/16/95
15	Sandra Almeida	Dole for President, Inc.	$1000	2/17/95

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16	Linda S. Bullard	Dole for President, Inc.	$1000	2/17/95
17	Richard L. Gutowski	Dole for President, Inc.	$1000	2/17/95
18	Kristine K. Pelletier	Dole for President, Inc.	$1000	2/17/95
19	William J. Bomal	Dole for President, Inc.	$1000	3/16/95
20	Dawra S. Bomal	Dole for President, Inc.	$1000	3/16/95
21	Richard A. Moeller	Dole for President, Inc.	$1000	3/16/95
22	B.L. Moeller	Dole for President, Inc.	$1000	3/16/95
23	Gayle M. Block	Dole for President Compliance, Inc.	$1000	6/15/95
24	William F. Johnson	Dole for President, Inc.	$1000	6/15/95
25	Maureen R. Johnson	Dole for President, Inc.	$1000	6/15/95
26	Thomas A. Keane	Dole for President Compliance, Inc.	$1000	6/15/95
27	Beverly Baron	Dole for President, Inc.	$1000	6/16/95
28	Jacob Baron	Dole for President, Inc.	$1000	6/16/95

29	Paul Hoiriis	Dole for President, Inc.	$1000	6/20/95
30	Mary R. Nichols	Dole for President Compliance, Inc.	$1000	6/23/95
31	Ellen E. Foulshan	Dole for President, Inc.	$1000	6/27/95
32	William L. Nichols	Dole for President Compliance, Inc.	$1000	6/27/95
33	Paul Drepanos	Dole for President Compliance, Inc.	$1000	6/29/95
34	Edna C. Hegarty	Dole for President, Inc.	$1000	6/29/95
35	Sandra Almeida	Dole for President Compliance, Inc.	$1000	6/30/95
36	Darra S. Bomal	Dole for President Compliance, Inc.	$1000	6/30/95
37	Richard L. Gutowski	Dole for President Compliance, Inc.	$1000	6/30/95
38	James Hegarty	Dole for President, Inc.	$1000	6/30/95
39	B.L. Moeller	Dole for President, Compliance, Inc.	$1000	6/30/95

40	Richard Moeller	Dole for President Compliance, Inc.	$1000	6/30/95
41	Kristine K. Pelletier	Dole for President, Inc.	$1000	6/30/95
42	Kristine K. Pelletier	Dole for President Compliance, Inc.	$1000	6/30/95
43	Victor DiRado	Dole for President Compliance, Inc.	$1000	7/5/95
44	Mary DiRado	Dole for President Compliance, Inc.	$1000	7/5/95
45	Brenda M. Joy	Dole for President, Inc.	$1000	7/5/95
46	Thomas M. Fay	Dole for President, Inc.	$1000	7/7/95
47	Juliet DiSalvo	Dole for President, Inc.	$1000	7/10/95
48	Steven Berenson	Dole for President Compliance, Inc.	$1000	7/13/95
49	Laura A. Malouf	Dole for President, Inc.	$1000	7/14/95
50	Laura A. Malouf	Dole for President Compliance, Inc.	$1000	7/14/95
51	Shibly D. Malouf	Dole for President Compliance, Inc.	$1000	7/14/95

52	Shibly D. Malouf	Dole for President, Inc.	$1000	7/14/95
53	Kathleen L. Timmons	Dole for President, Inc.	$1000	7/14/95
54	Kathleen L. Timmons	Dole for President Compliance, Inc.	$1000	7/14/95
55	Richard P. Timmons	Dole for President, Inc.	$1000	7/14/95
56	Richard P. Timmons	Dole for President Compliance, Inc.	$1000	7/14/95
57	William J. Bomal	Dole for President Compliance, Inc.	$1000	7/17/95
58	A. S. Carpinone	Dole for President, Inc.	$1000	7/17/95
59	Anna Carpinone	Dole for President, Inc.	$1000	7/17/95
60	Anna Carpinone	Dole for President Compliance, Inc.	$1000	7/17/95
61	A.S. Carpinone	Dole for President Compliance, Inc.	$1000	7/17/95
62	Karen M. Roberts	Dole for President, Inc.	$1000	7/21/95
63	Lisa A. Fireman	Dole for President, Inc.	$1000	7/28/95

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64	Barry R. Fireman	Dole for President, Inc.	$1000	7/28/95
65	Cynthia Shean	Dole for President, Inc.	$1000	7/29/95
66	Cheryl Joy	Dole for President Compliance, Inc.	$1000	7/30/95
67	Cynthia Shean	Dole for President Compliance, Inc.	$1000	7/31/95
68	L.B. Bullard	Dole for President Compliance, Inc.	$1000	8/1/95
69	Joan Drepanos	Dole for President, Inc.	$1000	8/5/95
70	Joan Drepanos	Dole for President Compliance, Inc.	$1000	8/5/95

All in violation of Title 2, United States Code, Sections 441f and 437g(d).

The United States Attorney Further Charges:

COUNT SEVENTY-ONE

[2 U.S.C. §§ 441a(a)(1)and 437g(d):
Contributions in Excess of $1,000 Statutory Limit]

In or about mid-August 1993, in the District of Massachusetts, and elsewhere, defendant SIMON C. FIREMAN did knowingly and willfully make a contribution in excess of the $1,000 contribution limitation contained in the Federal Election Campaign Act, said contributions aggregating $2,000 or more during calendar year 1993; to wit, SIMON C. FIREMAN did knowingly and willfully make a contribution to the Citizens for Joe Kennedy Committee, a federal political committee, in the approximate amount of $6,000.

All in violation of Section 441a(a)(1) and Section 437g(d) of Title 2 of the United States Code.

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The United States Attorney Further Charges:

COUNT SEVENTY-TWO

[2 U.S.C. §§ 441a(a)(1) and 437g(d):
Contributions in Excess of the $1,000 Statutory Limit]

In or about early 1995 and mid-1995, in the District of Massachusetts, and elsewhere, defendant SIMON C. FIREMAN did knowingly and willfully make a contribution in excess of the $1,000 contribution limitation contained in the Federal Election Campaign Act, said contributions aggregating $2,000 or more during calendar year 1995; to wit, SIMON C. FIREMAN did knowingly and willfully make a contribution to the Dole for President Committees, federal political committees, in the approximate amount of $69,000.

All in violation of Section 441a(a)(1) and Section 437g(d) of Title 2 of the United States Code.

The United States Attorney Further Charges:

COUNT SEVENTY-THREE

(2 U.S.C. §§ 441a(a)(3) and 437g(d):
Contributions in Excess of $25,000 Statutory Limit)

During 1995, in the District of Massachusetts, and elsewhere, defendant SIMON C. FIREMAN did knowingly and willfully make a contribution in excess of the contribution limitation contained in the Federal Election Campaign Act, said contributions aggregating $25,000 or more during calendar year 1995; to wit, SIMON C. FIREMAN did knowingly and willfully make a contribution to the Dole for President Committees, federal political committees, in the approximate amount of $69,000.

All in violation of Section 441a(a)(3) and Section 437g(d) of Title 2 of the United States Code.

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The United States Attorney Further Charges:

COUNT SEVENTY-FOUR

(2 U.S.C. §§ 441b(a) and 437g(d):
Prohibited Contributions by Corporation

1. From in or about late 1991 until in or about the date of this Information, defendant AQUA-LEISURE INDUSTRIES, INC., a corporation doing business and headquartered in Avon, Massachusetts engaged in a pattern of activity that constituted prohibited contributions to candidates for federal office. These activities, which were not reimbursed by any appropriate campaign committee, involved but were not limited to:

(a) using corporate facilities to solicit campaign contributions (such as telephones, fax machines, copiers, etc.);

(b) using corporate employees while at work to arrange fundraising events;

(c) soliciting contributions from corporate employees by other corporate employees while at work;

(d) using corporate facilities to host fundraising events;

(e) making use of corporate funds in the form of interest free loans of corporate funds to assist individuals in making campaign contributions.

2. From in or about late 1991 until on or about the date of this information, in the District of Massachusetts, and elsewhere, AQUA-LEISURE INDUSTRIES, INC., the defendant herein, a corporation, did knowingly and willfully make contributions and expenditures in violation of the prohibition against corporate

contributions contained in the Federal Election Campaign Act, said contributions and expenditures aggregated $2,000 or more during a calendar year, to wit, the said defendant did knowingly and willfully make contributions and expenditures to federal candidates and federal political committees through "in kind" contributions as alleged in paragraph 1(a) through (e) of this Count.

All in violation of Title 2, United States Code, Sections 441b(a) and Section 437g(d).

DONALD K. STERN
United States Attorney

By: _____
JOSEPH F. SAVAGE, JR.
Assistant U.S. Attorney

file

MEMORANDUM

TO: Jack MacDonald
Designated Ethics Officer

THROUGH Lawrence M. Noble
General Counsel

FROM Lois G. Lerner
Associate General Counsel

DATE 11/25/96

RE Recusal Statement

Attached is a statement from Andrew Turley, recusing himself from participation in MUR 4355. If you need anything further, let us know.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

November 21, 1996

TO: L. Lerner
FROM: A. Turley

SUBJECT: Recusal From MUR 4355 (*Aqua-Leisure Industries*)

Regrettably, I may have an appearance of a conflict of interest with regard to the above-captioned case.

Kenneth A. Fischer is an independent sales representative for Aqua-Leisure Industries. According to the attached excerpt from the *Kansas City Star*, Mr. Fischer apparently pled guilty to making illegal political contributions, was sentenced to a fine of $2,000, and placed on probation for one year.

I was associated with Mr. Fischer on a professional basis approximately 15 years ago. During that time, I served on the merchandising staff of the former Zayre Corporation in Framingham, MA. Mr. Fischer was one of our key suppliers with whom I worked very closely in my areas of responsibility. Though I have not seen Mr. Fischer since that time, I have a good friend who currently works for and is very close with Mr. Fischer. Though I do not believe these circumstances give rise to any actual conflict of interest, they do create the appearance of a conflict for which, as a matter of prudence, I should probably be recused from any substantive work on this matter.

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TITLE: Fund-raiser pleads guilty to illegal aid
Kenneth Fischer Sr. admits to contributions to Dole campaign.
BYLINE: JOE STEPHENS
CREDIT: Staff Writer
EST. PAGES: 1
DATE: 11/19/96
DOCID: KCST393475
SOURCE: The Kansas City Star; KCST
EDITION: METROPOLITAN; SECTION: NATIONAL/WORLD; PAGE: A2
(Copyright 1996)

A third Massachusetts fund-raiser for Bob Dole's presidential campaign has pleaded guilty to making illegal political contributions.

Kenneth Fischer Sr. of Framingham admitted to making at least $2,000 in illegal contributions in 1995 at the request of a vice chairman of Dole's campaign. A federal judge in Boston fined Fischer $2,000 and placed him on probation for one year.

Fischer worked as an outside sales representative for Aqua-Leisure Industries, a pool-toy company owned by Dole campaign official Simon Fireman.

Fischer admitted at his sentencing Thursday that Fireman asked him to raise money for Dole. Fischer gave the $1,000 permitted by law, then gave an additional $2,000 to his adult children. They, in turn, gave the money to Dole's campaign under their own names.

That arrangement violated the $1,000 limit on individual contributions and disguised the true source of the funds.

Employees of Fischer's company, KAF, gave thousands more to Dole. But Fischer's plea agreement with federal prosecutors did not detail whether he also paid for other contributions, as suggested by documents obtained by The Kansas City Star. The scheme was uncovered by The Star earlier this year in a computer analysis of contribution patterns. At the time, Fischer, his family and his employees denied any wrongdoing.

A resulting federal investigation determined that Fireman used his relatives and employees to illegally filter $120,000 to federal candidates, including $69,000 to Dole. In October, Fireman and his company pleaded guilty to 74 criminal counts and were ordered to pay $6 million in fines - 10 times the previous record in a campaign-finance case. Fireman also was sentenced to six months under house arrest and placed on probation for two years.

Two weeks ago Fireman's secretary, Carol Nichols, pleaded guilty to felony charges and was sentenced to four months of house arrest, one year of probation and a fine of $7,500.

Federal prosecutor Joe Savage said Fischer apparently used his own money in the scheme.

A Dole spokesman has said Dole knew nothing about the repayments.

DESCRIPTORS: U.S. ELECTIONS
OTHER TERMS: Election '96

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AGENDA DOCUMENT NO. X98-13

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of) CASE CLOSURES UNDER ENFORCEMENT PRIORITY

GENERAL COUNSEL'S REPORT

I. INTRODUCTION.

The cases listed below have been identified as either stale or of low priority based upon evaluation under the Enforcement Priority System (EPS). This report is submitted to recommend that the Commission no longer pursue these cases.

II. CASES RECOMMENDED FOR CLOSURE.

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

EPS was created to identify pending cases which, due to the length of their pendency in inactive status or the lower priority of the issues raised in the matters relative to others presently pending before the Commission, do not warrant further expenditure of resources. Central Enforcement Docket (CED) evaluates each incoming matter using Commission-approved criteria which results in a numerical rating of each case.

Closing cases permits the Commission to focus its limited resources on more important cases presently

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pending before it. Based upon this review, we have identified 16 cases that do not warrant further action relative to other pending matters.[1] The attachment to this report contains summaries of each case, the EPS rating, and the factors leading to assignment of a low priority and recommendation not to further pursue the matter.

B. Stale Cases

Effective enforcement relies upon the timely pursuit of complaints and referrals to ensure compliance with the law. Investigations concerning activity more remote in time usually require a greater commitment of resources, primarily due to the fact that the evidence of such activity becomes more difficult to develop as it ages. Focusing investigative efforts on more recent and more significant activity also has a more positive effect on the electoral process and the regulated community. In recognition of this fact, EPS provides us with the means to identify those cases which remained unassigned for a significant period due to a lack of staff resources for effective investigation. The utility of commencing an investigation declines as these cases age, until they reach a point when activation of a case would not be an efficient use of the Commission's resources.

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[1] These cases are: MUR 4631 (*Perot/McClure*), MUR 4661 (*Cox and Amplicon, Inc.*); MUR 4667 (*Specter & Greenwood*), MUR 4668 (*Schakowsky for Congress*), MUR 4672 (*Friends of John O'Toole*); MUR 4673 (*Papan for Assembly*), MUR 4676 (*Warren County Democratic Committee*); MUR 4677 (*Patrick Kennedy*); MUR 4681 (*Jack Block*), MUR 4683 (*Janice Schakowsky for Congress*), MUR 4684 (*Spartanburg County Republicans*); MUR 4694 (*Jan Schakowsky for Congress*), MUR 4695 (*Schakowsky for Congress*); MUR 4696 (*Janice Schakowsky for Congress*), MUR 4703 (*Dumont Institute / Robert McGee*), and Pre-MUR 356 (*Pritzker for Congress*).

We have identified cases which have remained on the Central Enforcement Docket for a sufficient period of time to render them stale. We recommend 27 of these cases be closed.[3] Nine of these cases were part of the so-called "Major 96" cases that have not been able to be activated due to a lack of resources to effectively pursue them in a timely fashion.[4] Since the time period rendering them stale has now passed, we recommend their closure at this time.

We recommend that the Commission exercise its prosecutorial discretion and direct closure of the cases listed below, effective February 24, 1998. Closing

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[3] These cases are: MUR 4350 (*Republican Party of Minnesota*), MUR 4355 (*Aqua-Leisure Industries, Inc.*), MUR 4372 (*Nebraska Democratic Party*), MUR 4394 (*Americans for Term Limits*), MUR 4472 (*Committee to Elect Winston*), MUR 4483 (*Nebraska Democratic State Central Committee*), MUR 4504 (*NH Democratic State Party Committee*), MUR 4507 (*People for Boschuntz*), MUR 4509 (*Wellstone for Senate*), MUR 4565 (*Bell for Congress*), MUR 4570 (*Congresswomen Andrea Seastrand*), MUR 4571 (*Sybert for Congress Committee*), MUR 4572 (*Friends of Dick B. Durham*); MUR 4575 (*Dana Covington*), MUR 4585 (*Hughes for Congress Committee*), MUR 4589 (*Congressman Bart Gordon*); MUR 4592 (*Iowa Public Television*), MUR 4593 (*Public Interest Institute*), MUR 4599 (*Bruce W. Hepenstretz*), MUR 4601 (*Chickasaw Nation of Oklahoma*), MUR 4602 (*WFSB-TV Channel 3*), MUR 4604 (*Dana Covington*), MUR 4605 (*Christian Coalition*), Pre-MUR 346 (*Coalition of Politically Active Christians*); RAD 96NF-09 (*O'Sullivan for Congress*), RAD 96L-12 (*Alaska Democratic Party*), and RAD 97NF-02 (*Zien for Congress*).

[4] These cases are: MUR 4350 (*Republican Party of Minnesota*), MUR 4372 (*Nebraska Democratic Party*); MUR 4394 (*Americans for Term Limits*), MUR 4472 (*Committee to Elect Winston*), MUR 4483 (*Nebraska Democratic State Central Committee*), MUR 4504 (*NH Democratic State Party Committee*), MUR 4507 (*People for Boschuntz*), MUR 4509 (*Wellstone for Senate*), and MUR 4565 (*Bell for Congress*).

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these cases as of this date will permit CED and the Legal Review Team the necessary time to prepare closing letters and case files for the public record.

III. RECOMMENDATIONS.

A. Decline to open a MUR, close the file effective February 24, 1998, and approve the appropriate letters in the following matters:

1. RAD 96NF-09
2. RAD 96L-12
3. RAD 97NF-02
4. Pre-MUR 346
5. Pre-MUR 356

B. Take no action, close the file effective March 2, 1998, and approve the appropriate letters in the following matters:

1. MUR 4350
2. MUR 4355
3. MUR 4372
4. MUR 4394
5. MUR 4472
6. MUR 4483
7. MUR 4504
8. MUR 4507
9. MUR 4509
10. MUR 4565
11. MUR 4570
12. MUR 4571
13. MUR 4572
14. MUR 4575
15. MUR 4585
16. MUR 4589
17. MUR 4592
18. MUR 4593
19. MUR 4599
20. MUR 4601
21. MUR 4602
22. MUR 4604
23. MUR 4605
24. MUR 4631
25. MUR 4661
26. MUR 4667
27. MUR 4668
28. MUR 4672
29. MUR 4673
30. MUR 4676
31. MUR 4677
32. MUR 4681
33. MUR 4683
34. MUR 4684
35. MUR 4694
36. MUR 4695
37. MUR 4696
38. MUR 4703

Date

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM MARJORIE W. EMMONS/LISA R. DAVIS
COMMISSION SECRETARY

DATE FEBRUARY 19, 1998

SUBJECT Case Closures Under Enforcement Priority. General Counsel's Report dated February 11, 1998.

The above-captioned document was circulated to the Commission on **Thursday, February 12, 1998**

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

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

This matter will be placed on the meeting agenda for

Tuesday, February 24, 1998

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

AGENDA DOCUMENT NO. X98-13

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	Agenda Document
Case Closures Under	)	No. X98-13
Enforcement Priority	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on February 24, 1998, do hereby certify that the Commission took the following actions with respect to Agenda Document No. X98-13:

1. Failed in a vote of 3-2 to pass a motion to approve the General Counsel's recommendations, subject to amendment of the closing date in recommendation A to read March 2, 1998, and subject to deletion of those cases listed in footnote 4 on Page 3 of the staff report.

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

2. Decided by a vote of 5-0 to

   A. Decline to open a MUR, close the file effective March 2, 1998, and approve the appropriate letters in the following matters:

1.	RAD 96NF-09	4.	Pre-MUR 346
2.	RAD 96L-12	5.	Pre-MUR 356
3.	RAD 97NF-02		

(continued)

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B. Take no action, close the file effective March 2, 1998, and approve the appropriate letters in the following matters:

1.	MUR 4350	20.	MUR 4601
2.	MUR 4355	21.	MUR 4602
3.	MUR 4372	22.	MUR 4604
4.	MUR 4394	23.	MUR 4605
5.	MUR 4472	24.	MUR 4631
6.	MUR 4483	25.	MUR 4661
7.	MUR 4504	26.	MUR 4667
8.	MUR 4507	27.	MUR 4668
9.	MUR 4509	28.	MUR 4672
10.	MUR 4565	29.	MUR 4673
11.	MUR 4570	30.	MUR 4676
12.	MUR 4571	31.	MUR 4677
13.	MUR 4572	32.	MUR 4681
14.	MUR 4575	33.	MUR 4683
15.	MUR 4585	34.	MUR 4684
16.	MUR 4589	35.	MUR 4694
17.	MUR 4592	36.	MUR 4695
18.	MUR 4593	37.	MUR 4696
19.	MUR 4599	38.	MUR 4703

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

Attest:

2-25-98
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

March 2, 1998

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kent Cooper, Executive Director
Center for Responsive Politics
1320 Nineteenth Street, NW
Washington, DC 20036

RE: MUR 4355

Dear Mr. Cooper:

On May 7, 1996, the Federal Election Commission received Ms. Ellen Miller's 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 exercised its prosecutorial discretion to take no action in the matter. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on March 2, 1998. 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. § 437(g)(a)(8).

Sincerely,

Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

March 2, 1998

Douglas C. Wurth, Esq.
810 First Street, NE, Suite 300
Washington, DC 20002

RE: MUR 4355
Dole for President, Inc., Dole for President Compliance Committee, Inc., and Robert E. Lighthizer, Treasurer

Dear Mr. Wurth:

On May 14, 1996, the Federal Election Commission notified your clients 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 exercised its prosecutorial discretion to take no action against your clients. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on March 2, 1998.

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 Jennifer H. Boyt on our toll-free number, (800)-424-9530. Our local number is (202) 694-1650.

Sincerely,

Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 2, 1998

Tracy A. Miner, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.
One Financial Center
Boston, MA 02111

RE: MUR 4355
Beverly C. Baron, Jacob Baron, Maureen R. Johnson, William F. Johnson, Thomas A. Keane, Paul Hoiriis, Jr., Richard Moeller, Barbara Moeller, and Gayle M. Block

Dear Ms. Miner:

On May 14, 1996, the Federal Election Commission notified your clients 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 exercised its prosecutorial discretion to take no action against your clients. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on March 2, 1998.

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If you have any questions, please contact Jennifer H. Boyt on our toll-free number, (800)-424-9530. Our local number is (202) 694-1650.

Sincerely,

Lois G. Lerner
Associate General Counsel

9 8 0 4 3 8 6 1 4 3 4

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 2, 1998

Carole A. Hand
40 Annette Road
Brockton, MA 02402

RE: MUR 4355

Dear Ms. Hand:

On May 14, 1996, 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 exercised its prosecutorial discretion to take no action against you. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on March 2, 1998.

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Sincerely,

Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 2, 1998

Walter A. Hand
40 Annette Road
Brockton, MA 02402

RE: MUR 4355

Dear Mr. Hand:

On May 14, 1996, 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 exercised its prosecutorial discretion to take no action against you. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on March 2, 1998.

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If you have any questions, please contact Jennifer H. Boyt on our toll-free number, (800)-424-9530. Our local number is (202)694-1650.

Sincerely,

Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 2, 1998

Martin K. Leppo, Esq.
Leppo & Leppo
15 South Main Street
Randolph, MA 02368

RE: MUR 4355
Carol A. Nichols

Dear Mr. Leppo:

On May 14, 1996, the Federal Election Commission notified your client 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 exercised its prosecutorial discretion to take no action against your client. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on March 2, 1998.

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Sincerely,

Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

March 2, 1998

Robert P. Sherman, Esq.
Hutchins, Wheeler & Dittmar
101 Federal Street
Boston, MA 02110

RE: MUR 4355
Aqua-Leisure Industries, Inc.

Dear Mr. Sherman:

On May 14, 1996, the Federal Election Commission notified your client 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 exercised its prosecutorial discretion to take no action against your client. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on March 2, 1998.

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Sincerely,

Lois G. Lerner
Associate General Counsel

9 9 0 4 3 8 6 1 4 7 8

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 2, 1998

Christine M. Roach, Esq.
Kern, Roach & Carpenter, P.C.
24 School Street
Boston, MA 02108

RE: MUR 4355
Cynthia Cushman nee Shean

Dear Ms. Roach:

On May 14, 1996, the Federal Election Commission notified your client 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 exercised its prosecutorial discretion to take no action against your client. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on March 2, 1998.

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Sincerely,

Lois G. Lerner
Associate General Counsel

9 8 0 4 3 8 6 1 4 3 9

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 2, 1998

Ms. Louise Fireman
348 Kent Street
Brookline, MA 02146

RE: MUR 4355

Dear Ms. Fireman:

On May 14, 1996, 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 exercised its prosecutorial discretion to take no action against you. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on March 2, 1998.

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Sincerely,

Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 2, 1998

Simon C. Fireman
P.O. Box 239
Avon, MA 02322

RE: MUR 4355

Dear Mr. Fireman:

On May 14, 1996, 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 exercised its prosecutorial discretion to take no action against you. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on March 2, 1998.

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Sincerely,

Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 2, 1998

Ms. Norma Yost Fireman
1001 Marina Drive, #803E
North Quincy, MA 02171

RE: MUR 4355

Dear Ms. Fireman:

On May 14, 1996, 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 exercised its prosecutorial discretion to take no action against you. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on March 2, 1998.

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Sincerely,

Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 2, 1998

Matthew L. Schemmel, Esq.
Cosgrove, Eisenberg & Kiley, P.C.
803 Hancock Street
P.O. Box 189
Quincy, MA 02170-0997

RE: MUR 4355
Steven Berenson, Lisa Fireman, and Barry Fireman

Dear Mr. Schemmel:

On May 14, 1996, the Federal Election Commission notified your clients 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 exercised its prosecutorial discretion to take no action against your clients. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on March 2, 1998.

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If you have any questions, please contact Jennifer H. Boyt on our toll-free number, (800)-424-9530. Our local number is (202) 694-1650.

Sincerely,

Lois G. Lerner
Associate General Counsel

cc: Steven Berenson
cc: Lisa Fireman
cc: Barry Fireman

9 8 0 4 3 8 6 1 4 1 3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 2, 1998

Harry Fireman
348 Kent Street
Brookline, MA 02146

RE: MUR 4355

Dear Mr. Fireman:

On May 14, 1996, 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.

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Sincerely,

Lois G. Lerner
Associate General Counsel

9 3 0 4 3 8 6 1 4 4 4

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

March 2, 1998

William L. Nichols
9 Blueberry Knoll
Bridgewater, MA 02324

RE: MUR 4355

Dear Mr. Nichols:

On May 14, 1996, 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.

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Sincerely,

Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 2, 1998

Edna C. Hegarty
27 Robbins Street
Avon, MA 02322

RE: MUR 4355

Dear Ms. Hegarty:

On May 14, 1996, 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 exercised its prosecutorial discretion to take no action against you. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on March 2, 1998.

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Sincerely,

Lois G. Lerner
Associate General Counsel

9304386146

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 2, 1998

James Hegarty
27 Robbins Street
Avon, MA 02322

RE: MUR 4355

Dear Mr. Hegarty:

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Sincerely,

Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

March 2, 1998

Thomas A. Keane
30 Meadow Lane, #10
Bridgewater, MA 02324

RE MUR 4355

Dear Mr Keane

On May 14, 1996, 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 exercised its prosecutorial discretion to take no action against you This case was evaluated objectively relative to other matters on the Commission's docket In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on March 2, 1998

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Sincerely,

Lois G Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

THIS IS THE END OF MUR # 4355

DATE FILMED 3/11/98 CAMERA NO. 2

CAMERAMAN EES

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Date: 8/11/98

✓ Microfilm

_____ Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED MUR 4355

90044327610

MAHONEY, HAWKES & GOLDINGS, LLP

ATTORNEYS AND COUNSELLORS AT LAW

THE HERITAGE ON THE GARDEN
75 PARK PLAZA
BOSTON, MASSACHUSETTS 02116

TELEPHONE (617) 457-3100
TELECOPIER (617) 457-3125

MORRIS M. GOLDINGS
LOYD M. STARRETT
WILLIAM S. HAWKES
MARK PETERS
FRANCES ALLOU GERSHWIN
BRUCE WINTHROP EDMANDS
JAMES B. COX
LAURENCE M. JOHNSON
ROBERT C. CADLE
DANIEL J. GOLDBERG
DAVID R. KERRIGAN
BRIAN W. LECLAIR
ALICE E. MOORE
ELLEN S. SHAPIRO

JOHN F. AYLMER, JR.
R. DAVID BECK
KIRSTEN NELSON CALLAHAN
RICHARD S. JACOBS
KEELY J. SULLIVAN
BARBARA HRICKO WAIT
MATTHEW F. ZAYOTTI

CHARLES FRANCIS MAHONEY
(1961-1995)

CLOSED

CLOSED

MAR 23 2 40 PM '98

March 19, 1998

Lois G. Lerner, Esquire
Associate General Counsel
Federal Election Commission
Washington, D.C. 20463

MUR 4355

Dear Ms. Lerner:

Pursuant to the third paragraph of your letter of March 2, 1998 to my client Simon C. Fireman, I am enclosing the following documents which I request be added to the public record:

1. Motion under 28 USC §2255 to vacate, set aside, or correct sentence by a person in federal custody (6 pages).

2. Memorandum of Law in Support of Section 2255 Motion of Simon C. Fireman (16 pages).

3. Reply Memorandum to Government's Opposition to Petitioner's 28 USC §2255 Motion (14 pages).

4. Proffer of Evidence in Support of §2255 Motion of Simon C. Fireman (5 pages).

5. Petitioner's Reply to Government's Further Memorandum in Opposition to Motion to Vacate, Set Aside or Correct Sentence.

Very truly yours,

Morris M. Goldings

MMG:23309:mac

Enclosures

cc: Vincent J. Convery, Jr.
Assistant General Counsel

COPY

AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	District: District of Massachusetts	
Name of Movant: Simon C. Fireman	Prisoner No.	Case No. 96-10187-WGY
Place of Confinement: Home Confinement at 1001 Marina Drive, North Quincy, MA		

UNITED STATES OF AMERICA v. Simon C. Fireman
(name under which convicted)

MOTION

1. Name and location of court which entered the judgment of conviction under attack United States District Court for the District of Massachusetts, Boston, MA

2. Date of judgment of conviction October 28, 1996

3. Length of sentence One year probation, first six months home confinement

4. Nature of offense involved (all counts) 18 U.S.C. §371; 2 U.S.C. §§441a(a) (1) and (3); 441f; and 437g(d). Conspiracy; contributions in the name of an individual other than the true donor; contributions in excess of $1,000 statutory limit and in excess of $25,000 statutory limit.

5. What was your plea? (Check one)
   (a) Not guilty ☐
   (b) Guilty ☒
   (c) Nolo contendere ☐

97 CV 12305 WGY

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

FILED IN CLERKS OFFICE OCT 15 11 03 AM '97

6. If you pleaded not guilty, what kind of trial did you have? (Check one)
   (a) Jury ☐
   (b) Judge only ☐

7. Did you testify at the trial?
   Yes ☐ No ☐

8. Did you appeal from the judgment of conviction?
   Yes ☐ No ☒

9. If you did appeal, answer the following:

(a) Name of court _____

(b) Result _____

(c) Date of result _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?
Yes ☐ No ☒X

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?
(1) First petition, etc. Yes ☐ No ☐
(2) Second petition, etc. Yes ☐ No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not.

_____

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all ground in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
(e) Conviction obtained by a violation of the privilege against self-incrimination.
(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
(g) Conviction obtained by a violation of the protection against double jeopardy.
(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
(i) Denial of effective assistance of counsel.
(j) Denial of right of appeal.

A. Ground one: The Federal Election Campaign Act limiting contributions as enacted and as applied in this case violated Movant's rights of freedom of expression and association guaranteed by the First Amendment to the United States Constitution, as more fully set forth in Movant's accompanying Memorandum of Law, incorporated by reference herein.

Supporting FACTS (state *briefly* without citing cases or law):

B. Ground two:

Supporting FACTS (state *briefly* without citing cases or law):

C. Ground three:

Supporting FACTS (state *briefly* without citing cases or law):

D. Ground four:

Supporting FACTS (state *briefly* without citing cases or law):

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them:

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes ☐ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing

(b) At arraignment and plea
Thomas E. Dwyer, Jr., Esquire
A. John Pappalardo, Esquire
400 Atlantic Avenue
Boston, MA 02110

(c) At trial

(d) At sentencing
Thomas E. Dwyer, Jr., Esquire
A. John Pappalardo, Esquire
Amy Baron Evans, Esquire
400 Atlantic Avenue
Boston, MA 02110

(e) On appeal _____

(f) In any post-conviction proceeding Morris M. Goldings, Esquire
Mahoney, Hawkes & Goldings
75 Park Plaza
Boston, MA 02116

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an ~~indictment~~ information, or on more than one indictment, in the same court and at approximately the same time?
Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
Yes ☐ No ☐

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

October 15, 1997
(date)

Signature of Movant

COPY

FILED
IN CLERK'S OFFICE
OCT 15

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

97 CV 12305 WGY

UNITED STATES OF AMERICA	
v.	Criminal No. 96-10187-WGY
SIMON C. FIREMAN	

MEMORANDUM OF LAW IN SUPPORT OF
§2255 MOTION OF SIMON C. FIREMAN

I. STATEMENT OF THE CASE

On July 10, 1996, an Information was filed in United States District Court for the District of Massachusetts charging Simon C. Fireman in Count One with conspiracy to interfere with the lawful functions of the Federal Election Commission, to make contributions in the name of third persons, and to evade statutory financial transaction reporting requirements, in violation of 18 U.S.C. §371. He was also charged in Counts Two through Seventy with making contributions in the name of an individual other than the true donor, in violation of 2 U.S.C. §§441(f) and 437g(d). He was charged in Counts Seventy-One and Seventy-Two with contributions in excess of the $1,000 statutory limit, in violation of 2 U.S.C. §§441a(a)(1) and 437g(d); and in Count Seventy-Three with contributions in excess of a $25,000 statutory limit, in violation of 2 U.S.C. §§441a(3) and 437g(d).

On July 22, 1996, Mr. Fireman appeared before the Honorable William G. Young, United States District Judge, and entered a plea of Not Guilty. (Transcript of Arraignment) Although a Plea Agreement had been entered into between Mr. Fireman and the Government on June 26, 1996, at the request of Judge Young acceptance of a guilty plea was deferred pending completion and review of a presentence report.

On October 23, 1996, Mr. Fireman appeared before the District Court "Consistent with the plea agreement and supplement thereto,"(Transcript of Plea and Disposition, p.2), Mr. Fireman pleaded guilty to so much of Count 1 as did not include "structuring," those charges being dismissed by the Government (Ibid.; pp. 4, 13-17, 35-37, 47-48, 59-60), and to Counts 2-8 and 71-73. He was then sentenced on Count 1 to probation for a term of one year, the first six months to be served in home confinement with specific restrictions, and on Counts 2-8 and 71-73 to pay a fine of $1,000,000. A special assessment of $300.00 was also ordered.

Pursuant to 28 U.S.C. §2255, Mr. Fireman now seeks a determination that the provisions of campaign contribution statutes with respect to which he pleaded guilty are unconstitutional.

II. THIS COURT HAS JURISDICTION OF THIS PETITION AS HOME CONFINEMENT AND PROBATION CONSTITUTE "CUSTODY."

Simon C. Fireman is filing this Motion pursuant to 28 U.S.C. §2255. As such, he is relying upon legal doctrines many

of which had their origin in the "Great Writ," the Writ of Habeas Corpus. Those who have filed that Writ were traditionally referred to as "Petitioners," and he will use that term herein.

THE PETITIONER IS SUBJECT TO RESTRAINTS ON HIS FREEDOM AND IS THUS "IN CUSTODY."

The Petitioner is now in custody within the meaning of 28 U.S.C. §2255, which provides:

> A prisoner in custody under sentence of a court established by act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.
>
> (emphasis added)

The term "in custody" is borrowed from the habeas corpus statutes. It has exactly the same meaning for §2255 motions as it has for habeas corpus applications. Rule 1 of the Rules Governing §2255 Proceedings, referring to Advisory Committee Note to Rule 1 of the Rules Governing §2254 Cases; see Heflin v. United States, 358 U.S. 415, 421 (1959).

The type of custody that will suffice is judged by a very liberal standard. Home confinement and probation involve obvious and significant restraints on freedom and constitute custody.

In Jones v. Cunningham, 371 U.S. 236 (1963), a prisoner free on parole was held to be in the custody of the parole board, within the meaning of the habeas corpus statute. While he was no longer imprisoned, he was under "conditions which significantly confine and restrain his freedom." Many Circuit courts are in accord. United States v. Ayala, 894 F.2d 425 (D.C. Cir. 1990); United States v. Kriz, 621 F.2d 306 (8th Cir. 1980); Addison v. United States, 589 F.2d 252 (5th Cir. 1979); Argro v. United States, 505 F.2d 1374 (2nd Cir. 1974); Courtney v. United States, 486 F.2d 1108 (9th Cir. 1973); Wapnick v. United States, 406 F.2d 841 (2nd Cir. 1969).

The same is true of a defendant who has been put on probation. United States v. Condit, 621 F.2d 1096 (10th Cir. 1980); Napoles v. United States, 536 F.2d 722 (7th Cir. 1976); Porth v. Templar, 453 F.2d 330 (10th Cir. 1971); United States v. Condit, 621 F.2d 1096, 1098 (10th Cir. 1980).

Supervised release is "custody." In Hensley v. Municipal Court, 411 U.S. 345 (1973), the Supreme Court held that a defendant who had been released on his own recognizance after conviction in state court was sufficiently in custody to bring a habeas corpus action. Since the terms of his recognizance required him to appear at all times and places as ordered by any court or magistrate, the Court ruled:

> He cannot come and go as he pleases. His freedom of movement rests in the hands of state judicial officers, who may demand his presence at any time and without a moment's notice. Disobedience is itself a criminal offense.

Ibid. at 351

Similarly, In United States v. Essig, 10 F.3d 968 (3rd Cir. 1993), the court held that although a state defendant's sentence may have already expired when he filed his petition attacking his sentence, this did not deprive the district court of jurisdiction, as the defendant was still subject to a three-year period of supervised release and thus was still "a prisoner in custody" at the time the petition was filed.

Home confinement as part of a sentence of probation clearly is a condition which "significantly confine and restrain [a defendant's] freedom," and Petitioner comes within the statutory definition of "a prisoner in custody."[1]

---

[1] This is particularly the case where, with respect to this Petitioner, his conditions of home confinement include as ordered by the Court, the following:

> ...The first six (6) months of probation are to be served in HOME CONFINEMENT with ELECTRONIC MONITOR at the expense of the defendant. While in confinement the defendant may leave the home to attend religious services and to attend doctor visits for himself. The defendant may go out in his yard for one (1) hour in the morning and one (1) hour in the afternoon. If the defendant wishes the use of a telephone, he must have a phone installed that can be monitored by US Probation Officer. This phone must be installed at the expense of the defendant. Telephone calls are limited to the number and kind of a prisoner at the Federal Detention Center in Plymouth. Likewise, the defendant is limited to the number of visitors of a prisoner at the Federal Detention Center in Plymouth. There will be no entertaining by the defendant. If his wife entertains, the defendant must remove himself from the room.

III. THE FEDERAL ELECTION CAMPAIGN ACT AS ENACTED AND AS APPLIED IN THIS CASE VIOLATES PETITIONER'S RIGHTS OF EXPRESSION AND ASSOCIATION GUARANTEED BY THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION.

The Petitioner asserts that the sections of the Federal Election Campaign Act (FECA) under which he was convicted through a plea of factual guilt and the application of these sections as an object of a conspiracy are violative of his rights to freedom of expression and association under the First Amendment to the United States Constitution.

Political expression is a hallowed right. The First Amendment protects political association as well as political expression. The constitutional right of association explicated in NAACP v. Alabama, 357 U.S. 449, 460 (1958), stemmed from the Supreme Court's recognition that effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association. Subsequent decisions, including Buckley v. Valeo, 424 U.S. 1 (1976), have made clear that the First and Fourteenth Amendments guarantee freedom to associate with others for the common advancement of political beliefs and ideas, a freedom that encompasses the right to associate with the political party of one's choice. Accordingly, "action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny." NAACP v. Alabama, supra at 460-461 (1958).

In Buckley v. Valeo, supra the Court held that the provisions of the FECA imposing a $1,000 limitation on direct or indirect contributions by individuals and groups to any

single candidate, or his authorized committee, with respect to any election for federal office, are not unconstitutional as violating First Amendment rights of freedom of association. The Court also held, inter alia, that provisions limiting expenditures by candidates on their own behalf violated the candidates' rights to freedom of speech; that provisions limiting total expenditures in various campaigns were invalid; and that provisions limiting the amount which any individual could spend, independently of a candidate but relative to the candidate, impermissibly abridged freedom of speech; and that the reporting requirements under the Act were valid.

Contrary to the holding in Buckley, the Petitioner now asserts that the FECA's contribution limitations do severely undermine to a material degree the potential for robust and effective discussions of candidates and campaign issues by individual citizens, associations, the press, candidates, and political parties. Accordingly, the Petitioner asserts that Buckley, thought by many, including several then Supreme Court Justices, to have been incorrectly decided in this respect, should be revisited and the campaign contribution sections declared unconstitutional in light of the intervening years since Buckley.

A. THE CAMPAIGN CONTRIBUTION STATUTE PLACES AN UNCONSTITUTIONAL LIMITATION ON FREEDOM OF EXPRESSION AND ASSOCIATION.

The campaign contribution statute places an unconstitutional limitation on freedom of expression and

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association for the following reasons, as expressed in the thoughtful concurring and dissenting Opinion in Buckley of Chief Justice Burger:

- Contributions and expenditures are two sides of the same First Amendment coin.

- Limitations place substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in protected expression.

- Limiting contributions as a practical matter limits expenditures and puts an effective ceiling on the amount of political activity and debate that the Government permits to take place.

- Contribution limitations restrict the political speech of the contributor as well as the candidate. Their constitutional interest in communicating ideas is the same, whether they or someone else utters the words.

- Limitations on contributions foreclose some candidacies and alter the nature of some electoral contests dramatically.

- Large contributions early in a campaign are important. "Seed money" can be essential, and the inability to obtain it may effectively end some candidacies before they begin.

- Candidates who must raise large initial contributions in order to appeal for more funds to a broader audience will be handicapped.

- The contribution limitation is arbitrary.

- Pooling money is a form of associational or joint activity, like volunteer work or endorsements.

9 0 0 4 3 0 9 4 6 3 3

- Bribery laws exist to combat corruption.
- Disclosure laws exist to make associations visible.

B. THE SUPREME COURT WAS SHARPLY DIVIDED IN BUCKLEY. THAT COURT HAS BEEN ALMOST FULLY REPLACED, AND CONSEQUENTLY A REVISITING OF THE CONSTITUTIONALITY OF THE $1,000 LIMIT ON CAMPAIGN CONTRIBUTIONS IS APPROPRIATE.

The decision in Buckley v. Valeo was complicated and complex, with actually five dissenting opinions. Chief Justice Burger joined in the opinion in part and dissented in part and filed an opinion. Justice White joined in the opinion in part and dissented in part and filed an opinion. Justice Marshall joined in the opinion in part and dissented in part and filed an opinion. Justice Rehnquist joined in the opinion in part and dissented in part and filed an opinion. Justice Blackmun joined in the opinion in part and dissented in part and filed an opinion. (Justice Stevens took no part in the consideration or decision of the case.)

In his concurrence and dissent, Chief Justice Burger stated, "The contribution limitations infringe on First Amendment liberties and suffer from the same infirmities that the Court correctly sees in the expenditure ceilings." Ibid. at 235. He also noted with concern the "rapid inflation in the cost of political campaigning." Ibid. at 242.

Justice White also concurred in part and dissented in part. While agreeing with the Court's judgment upholding the limitation on contributions, he wrote, "This limitation is valid although it imposes a low ceiling on what individuals may

deem to be their most effective means of supporting or speaking on behalf of the candidate -- i.e., financial support given directly to the candidate." Ibid. at 260 (emphasis added). (Given twenty years' inflation, this low ceiling is considerably lower today.)

Justice Marshall concurred in part and dissented in part, disagreeing with the Court's invalidating of the section of the Act limiting the amount a candidate may spend from his personal funds in connection with his campaign during any calendar year. He wrote:

> While the limitations on contributions are neutral in the sense that all candidates are foreclosed from accepting large contributions, there can be no question that large contributions generally mean more to the candidate without a substantial personal fortune to spend on his campaign. Large contributions are the less wealthy candidate's only hope of countering the wealthy candidate's immediate access to substantial sums of money. With that option removed, the less wealthy candidate is without the means to match the large initial expenditures of money of which the wealthy candidate is capable. In short, the limitations on contributions put a premium on a candidate's personal wealth.
>
> Ibid. at 188-189
> (emphasis added)

Justice Black concurred in part and dissented in part. He wrote:

> I am not persuaded that the Court makes, or indeed is able to make, a principled constitutional distinction between the contribution limitations, on

> the one hand, and the expenditure limitations on the other, that are involved here.
>
> Ibid. at 290 (emphasis added)

C. INFLATIONARY FEARS EXPRESSED BY CHIEF JUSTICE BURGER AND OTHERS IN BUCKLEY v. VALEO HAVE BEEN REALIZED, AND AS A RESULT THE $1,000 LIMIT ON CAMPAIGN CONTRIBUTIONS NOW UNCONSTITUTIONALLY LIMITS POLITICAL SPEECH.

Dissenting in part in Buckley, Chief Justice Burger pointed out that what he saw as the Federal Election Campaign Act's unconstitutional limitation on political speech would only worsen in the future, due to "the rapid inflation in the cost of political campaigning:"

> The argument that the ceiling is not, after all, very low as matters now stand gives little comfort for the future, since the Court elsewhere notes the rapid inflation in the cost of political campaigning. Buckley, 424 U.S. at 241 (1976).

Petitioner asserts that the inflationary fears expressed above have now been realized and the FECA's contribution limitation of $1,000 results in an unconstitutional limitation on political speech. The Supreme Court's decision in Buckley as to the $1,000 limitation must be revisited because inflation has made compliance with such limitations unreasonable and inflationary adjustments were not built into the statute by Congress. A hearing on the Petitioner's Motion will demonstrate to this Court that the $1,000 limitation which was

upheld by the Supreme Court twenty years ago in Buckley is now unreasonably restrictive due to inflation and thus unconstitutionally limits political speech.

D. A 1996 CASE ON POLITICAL PARTY EXPENDITURES SHOWS THE CURRENT SUPREME COURT TO BE VERY DIVIDED AND CRITICAL OF THE UNCONSTITUTIONAL IMPACT OF FECA ON THE FIRST AMENDMENT, AND CONSEQUENTLY A REVISITING OF THE CONSTITUTIONALITY OF THE $1,000 LIMIT ON CAMPAIGN CONTRIBUTIONS IS APPROPRIATE.

In Colorado Republican Campaign Committee v. FEC, 116 S.Ct. 2309 (1996), the Supreme Court examined that part of the FECA statute dealing with expenditures by a political party and held that the First Amendment prohibits application of FECA's Party Expenditure Provision to the kind of expenditure at issue in the case--an expenditure made by the political party independently, without coordination with any candidate. This recent case partially brings to light the split views and dissatisfaction of current Justices as to the adverse and unconstitutional impact of FECA on the First Amendment and indicates that a re-examination of the $1,000 limit on campaign contributions is in order and required.

Justice Breyer announced the judgment of the Court and delivered an opinion, in which Justice O'Connor and Justice Souter joined. Justice Kennedy filed an opinion concurring in the judgment and dissenting in part, which Chief Justice Rehnquist and Justice Scalia joined. Justice Thomas filed an opinion concurring in the judgment and dissenting in part,

which Chief Justice Rehnquist and Justice Scalia joined in part. Justice Stevens filed a dissenting opinion, which Justice Ginsburg joined.

In vacating the judgment of the Court of Appeals for the Tenth Circuit and remanding the case, Justice Breyer stated that the issue is complex, with important competing interests, and that the Court should proceed cautiously:

> This issue is complex. As Justice KENNEDY points out, post, at 2322-2323, party coordinated expenditures do share some of the constitutionally relevant features of independent expenditures. But many such expenditures are also virtually indistinguishable from simple contributions (compare, for example, a donation of money with direct payment of a candidate's media bills, see Buckley, Supra, at 46, 96 S.Ct., at 647-648).
>
> Ibid. at 2320

> Justice THOMAS...would reach the broader constitutional question...In our view, given the important competing interests involved in campaign finance issues, we should proceed cautiously, consistent with this precedent, and remand for further proceedings.
>
> Ibid. at 2321

Emerging from the myriad of views and opinions of the Justices is a conclusion that they all have strong First Amendment concerns. These expressions, along with the split views and number of opinions on the narrow question that was presented, are a further basis for a review of the statute.

Justice Breyer wrote in the main opinion, "The independent expression of a political party's views is 'core' First

Amendment activity no less than is the independent expression of individuals, candidates, or other political activities." Ibid. at 2316.

Justice Kennedy wrote:

> The First Amendment embodies a "profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open." New York Times Co. v. Sullivan 376 U.S. 254, 270, 84 S.Ct. 710, 721, 11 L.Ed.2d 686 (1964).

Justice Thomas, concurring in the judgment and dissenting in part, issued a full-scale attack on FECA limitations. Agreeing with Chief Justice Burger in Buckley that "contributions and expenditures are two sides of the same First Amendment coin," ibid. at 2325, Justice Thomas concluded that a contribution results in more effective political speech than does an expenditure:

> When an individual donates money to a candidate or to a partisan organization, he enhances the donee's ability to communicate a message and thereby adds to political debate, just as when that individual communicates the message himself. Indeed, the individual may add more to political discourse by giving rather than spending, if the donee is able to put the funds to more productive use than can the individual.

Noting that giving and spending also involve basic associational rights under the First Amendment, he pointed to the unconstitutional impingement on freedom of association:

> Political associations allow citizens to pool their resources and make their

> advocacy more effective, and such efforts are fully protected by Comm'n v. NCPAC, supra, at 494, 105 S.Ct. at 1467. If an individual is limited in the amount of resources he can contribute to the pool, he is most certainly limited in his ability to associate for purposes of effective advocacy.
>
> Ibid. at 2326

Justice Thomas further recognized that the distinction between contributions and expenditures being speech by the individual rather than speech by proxy actually makes the speech characteristic of contributions more vital:

> But the practical judgment by a citizen that another person or an organization can more effectively deploy funds for the good of a common cause than he can ought not deprive that citizen of his First Amendment right.
>
> In Federal Election Comm'n. v. NCPAC, we explained ... "To say that their collective action in pooling their resources to amplify their voices is not entitled to full First Amendment protection would subordinate the voices of those of modest means as opposed to those sufficiently wealthy to be able to buy expensive media ads with their own resources." 470 U.S., at 495, 105 S.Ct, at 1467.
>
> Ibid. at 2327

Justice Thomas concluded:

> In sum, unlike the Buckley Court, I believe that contribution limits infringe as directly and as seriously upon freedom of political expression and association as do expenditure limits. The protections of the First Amendment do not depend upon so fine a line as that between spending money to support a candidate or group and giving

> money to the candidate or group to spend for the same purpose. In principle, people and groups give money to candidates and other groups for the same reason that they spend money in support of those candidates and groups; because they share social, economic, and political beliefs and seek to have those beliefs affect governmental policy. I think that the Buckley framework for analyzing the constitutionality of campaign finance laws is deeply flawed.

Thus, the critique by Justice Thomas and the expressed First Amendment concerns of the other Justices show that a revisiting of the campaign contribution question is appropriate and necessary.

CONCLUSION

Therefore, for the foregoing reasons and authorities, Simon C. Fireman requests that his Motion under 28 U.S.C. §2255 be allowed and that his conviction for conspiracy to violate certain campaign contribution sections of the Federal Election Campaign Act and for violation of those provisions be vacated as based upon the application of statutory provisions which are in violation of the First Amendment to the United States Constitution.

By his Attorneys,

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DATED: October 15, 1997
RSJ:370

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SIMON C. FIREMAN, **Plaintiff** **v.** **UNITED STATES OF AMERICA,** **Defendant**	Civil Action No. 97-11188-WGY

REPLY MEMORANDUM TO GOVERNMENT'S OPPOSITION TO PETITIONER'S 28 U.S.C. §2255 MOTION

The Petitioner Simon C. Fireman replies to the Government's Opposition to his §2255 Motion as follows:

I. PETITIONER MAY UNQUESTIONABLY COLLATERALLY ATTACK THE CONSTITUTIONALITY OF THE STATUTE.

The Government argues that Petitioner's §2255 Motion should be denied "because, under the well-settled principles of United States v. Frady, 456 U.S. 152 (1981), it is procedurally defaulted." (Government's Memorandum in Opposition, p. 1). The Government continues, pp. 1-2, "Fireman does not show cause for his failure to previously raise his constitutional argument, either in the district court or on appeal."

The law relied upon by the Government is to the contrary and very well-settled: It is universally recognized that a defendant may plead guilty and later collaterally attack the constitutionality of the statute. This matter has been fully briefed. Petitioner respectfully refers the Court to, and incorporates by specific reference, the Memorandum of Law in

Support of Plaintiff's Complaint for Declaratory Judgment, pp. 8-11; the Opposition of Plaintiff Simon C. Fireman to Government's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted, pp. 4-8; and Plaintiff's Supplemental Memorandum of Points and Authorities in Opposition to Government's Motion to Dismiss, pp. 1-3 (all memoranda filed in the joined Declaratory Judgment case).

The Government cites no cases to the contrary. United States v. Frady, supra, is inapposite. As the Government quotes at p. 4 of its Memorandum, Frady concerned "collateral review based on trial errors to which no contemporaneous objection was made." Ibid at 167 (emphasis added). The trial error in Frady was the failure to object to erroneous jury instructions before the jury retired. There were no trial errors here; there was no trial. Unless barred by a plea agreement, which it was not in the instant case, collateral attack is not barred by a guilty plea, and the Petitioner is not "procedurally defaulted."[1]

The Petitioner has certainly suffered "actual prejudice" from being charged and convicted under an arguably unconstitutional statute. The $1,000 limit violation and the other violations charged are inextricably intertwined. But for the $1,000 limit, argued herein to be unconstitutional on its face, the other violations would not have occurred. The other provisions charged thus become unconstitutional as applied, as the acts are all hand-in-glove with each other. Steffel v. Thompson, 415 U.S. 452, 474 (1974); Whiting v. Town of Westerly, 942 F. 2nd 18, 21, fn. (1st Cir. 1991).

[1] Furthermore, it is a matter of record in this case that the Petitioner was not informed and was unaware of his right to challenge the constitutionality of the statute as part of his pleadings in the case. He stated, "If I had been so informed, I would have sought to make such a challenge. . . . " (Affidavit of Simon C. Fireman in Support of Complaint for Declaratory Judgment, Attachment 1 to Complaint for Declaratory Judgment) (joined by order of the Court with the instant Motion).

Further, there is a question as to whether an unconstitutionally low $1,000 limitation on contributions would be severable from the rest of the statute. The statute was held severable in Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612 (1976) (per curiam), with the $1,000 limit left standing. Had that provision been declared unconstitutional also, certainly the whole statute would have fallen. Shrink Missouri Government PAC v. Maupin, 71 F.3rd 1422 (8th Cir. 1995) (declarations and disclosures relating to campaign expenditures not severable where expenditure limits declared unconstitutional in violation of First Amendment).

Finally, at a minimum the Petitioner would be entitled to re-sentencing if the $1,000 limit, which was responsible for all acts charged, is declared unconstitutional.

II. THIS COURT NEED NOT BE BOUND BY THE OUTDATED PLURALITY OPINION IN BUCKLEY V. VALEO.

A. Using the Predictive Demise Doctrine, this Court should Decide this Case According to its Reasoned View of the Way the Supreme Court Would Decide it Today.

In Spector Motor Service v. Walsh, 139 F.2d 809, 814 (2nd Cir. 1943), the Second Circuit Court of Appeals asserted that its "function cannot be limited to a mere blind adherence to precedent. We must determine with the best exercise of our mental powers of which we are capable that law which in all probability will be applied to these litigants or to others similarly situated." (emphasis added). Although dissenting to the Court's ultimate holding in the case, Judge Learned Hand concurred "that one should not wait for formal retraction in the face of changes plainly foreshadowed; the higher court may not entertain an appeal in the case before the lower court, or the parties may not choose to appeal..." Ibid at 823.

Referring to these opinions as "the classic statements of this doctrine," and citing the dissent of Chief Judge Woodbury in United States v. Girouard, 149 F. 2d 760 (1st Cir. 1945), the Ninth Circuit Court of Appeals "conclude[d] that the courts of appeal should decide cases according to their reasoned view of the way the Supreme Court would decide the pending case today." Vukasovich, Inc. v. C.I.R., 790 F.2d 1409, 1416 (9th Cir. 1986). See also Buzynski v. Oliver, 538 F.2d 67 (1st Cir. 1976), citing Women's Liberation Union, infra, and the dissent in Girouard, supra ("there are circumstances in which it is appropriate for a court of appeals to disregard the teachings of earlier Supreme Court Decisions)."

This "predictive demise" method of analysis has a healthy tradition in the First Circuit. In an often cited dissent in United States v. Girouard, supra, Chief Judge Woodbury stated, "[l]ike all appellate courts I conceive it to be our judicial duty to decide cases as we think they should be decided, but as an intermediate appellate court one of the factors, and a highly important one, for us to take into consideration in concluding how we should decide a case is the view which we think the Supreme Court would take on the question at issue before us." (emphasis added). Chief Judge Woodbury continued:

> [S]ituations arise when in the exercise to the best of our ability of the duty to prophesy thrust upon us by our position in the federal judicial system we must conclude that dissenting opinions of the past express the law of today. When this situation arises and we do not agree with decisions of the Supreme Court I think it our duty to decline to follow such decisions and instead to follow reasoning with which we agree. As I see it this is the situation which confronts us here.

Ibid (emphasis added). Chief Judge Woodbury's prediction in Girouard proved to be accurate, as the Supreme Court overruled the First Circuit majority in Girouard v. United States, 328 U.S. 61 (1946). Later, in Women's Liberation Union of Rhode Island v. Israel,

512 F.2d 106 (1st Cir. 1975), the First Circuit upheld the district court's ruling that a statute prohibiting bars on premises where no food is prepared from serving beverages to women was unconstitutional, ruling that "the authority of earlier precedents ha[d] waned...with the metamorphosis of the attitudes which fed them."[2]

B. Commentators Concur with the Predictive Demise Analysis.

Commentators concur that lower courts "should be free to disregard even authoritative precedent when it is predictable that the Supreme Court would no longer follow the precedent." Bratz, "Stare Decisis in Lower Courts: Predicting the Demise of Supreme Court Precedent," 60 Washington Law Review 87 (1984), pp. 89, 93, 94-5. "If a precedent is predictably impotent, it is overly formalistic to deprive a litigant of a result in lower court because the Supreme Court has not yet done what it predictably will do. ... Lower courts that decline to follow precedent on predictive grounds are still following the higher court. Instead of following a particular case, however, they are following a trend or a tendency." Ibid at 99.

"The Attitude of Lower Courts to Changing Precedents," 50 Yale Law Journal 1448, 1450 (1941), supported "a progressive view by judges whose opinions should look beyond what occurred yesterday to what ought to prevail today or, at least, to what will prevail tomorrow." "This responsibility can be accepted and constructively handled by these courts by an extinction of the query 'What has the Supreme Court done?' and substitution therefor of

[2] A similar predictive demise doctrine exists where a federal court must determine how the highest court of a state would decide a case. Quoting West v. AT&T Co., 311 U.S. 223, 237 (1940), the First Circuit stated in In Re Ryan, 851 F.2d 502, 509 (1st Cir. 1988), that "[w]e have no difficulty with the proposition that, in an appropriate case, a federal court must not consider itself bound by old state court decisions if it 'is convinced by other persuasive data that the highest court of the state would [now] decide otherwise.'" The First Circuit noted that, although West "dealt only with a state appellate decision, not a state supreme court decision[,] ... in Berhardt v. Polygraphic Company of America, Inc., 350 U.S. 198[, 204-205] (1956), the United States Supreme Court indicated that on certain occasions a federal court need not follow an old state supreme court decision." Ibid, fn. 9.

the query 'What would the Supreme Court do?'" Ibid at 1457-58 (emphasis in original). "Where the old decision . . . is plainly outmoded, the principle of conformance may well yield." "Supreme Court's Decision Held Not Conclusive on Lower Federal Court," 56 Harvard Law Review 652, 653 (1943).

Judge Charles Wyzanski of this district suggested in "A Trial Judge's Freedom and Responsibility," 65 Harvard Law Review 1281 (1952), that, alternatively, a judge should "explicitly stat[e] for the benefit of an appellate court any doubts he has." "[T]he reservation in the opinion promotes the growth of the law in the court where it most counts. For if the criticism of the precedent be just, the appellate court will set matters straight, and any trial judge worthy of his salt will feel complimented in being reversed on a ground he himself suggested." Id. at 1299.

It is notable also that Chief Justice Rehnquist has expressed the view that stare decisis applies with less force to constitutional opinions that were hotly contested when decided and questioned by Justices in subsequent opinions. Payne v. Tennessee, 501 U.S. 808, 827-30 (1991). "Applying these general principles, the Court has during the past 20 terms overruled in whole or in part 33 of its previous constitutional decisions." Ibid at 828, and fn. 1, citing these decisions.

C. Hutto v. Davis Does Not Bind This Court to Rubber-Stamp the Outdated Buckley Case.

Hutto v. Davis, 454 U.S. 370 (1982), cited and relied on by the Government at p. 10, does not require that this Court rubber-stamp the outdated Buckley case. The Government's statement at p. 10 of its Memorandum, quoting Hutto, supra at 375, that "lower federal courts must follow Supreme Court precedent lest 'anarchy . . . prevail within the federal judicial

system,' " must be placed in context. Rummel v. Estelle, 445 U.S. 947 (1980), which the Supreme Court held in Hutto that the Fourth Circuit must follow, was not outdated precedent. It was only two years old at the time of Hutto, and in fact was decided after the Fourth Circuit en banc had affirmed the Fourth Circuit panel in Hutto. After Rummel, the Supreme Court remanded Hutto for reconsideration in light of that intervening decision. After the Fourth Circuit maintained its position and did not reverse, the Supreme Court reversed, "[b]ecause the Court of Appeals failed to heed our decision in Rummel." Hutto, supra at 372. This context is in marked contrast to the predictive demise of an outdated case.

Even then, Hutto was greatly controversial within the Supreme Court. "Rummel stands for the proposition that federal courts should be 'reluctan[t] to review legislatively mandated terms of imprisonment,' id. at 274." Ibid at 373-74. Rummel involved a habitual offender statute; Hutto involved 40 years for possession and distribution of marijuana. Although Justice Powell concurred in the judgment on the basis of the facts, he pointedly stated "affirmance of the judgment of the Court of Appeals could be justified." Ibid at 379 (emphasis added):

> [O]ur system of justice always has recognized that appellate courts *do* have a responsibility – expressed in the proportionality principle – not to shut their eyes to grossly disproportionate sentences that are manifestly unjust. I therefore have no criticism of the District Court or the Court of Appeals for exercising this responsibility and reaching the judgments that are reversed here today.
>
> Ibid at p. 377 ("do" emphasis in original, other emphasis added)

Additionally, three Justices dissented, stating that "the Court has misused precedent in order to place its imprimatur on a punishment that the courts below have determined, with ample justification, to be cruel and unusual." Ibid at 387 (emphasis added). The dissenters

stated that the summary disposition of the case on the basis of the certiorari papers was a "patent abuse of our judicial power," ibid at 388, noting:

> In view of this abuse, it is certainly startling that the Court should suggest that the Court of Appeals' affirmance of the District Court in this case was tantamount to "anarchy." Ante at 705. Quite to the contrary, the Court of Appeals has only fulfilled its constitutional responsibility to apply the Court's precedents in light of reason and experience – something that this Court today has plainly failed to do.
>
> Ibid, fn. 7 (emphasis added)

Here, too, this Court should exercise its constitutional responsibility and not rubber stamp on the basis of Buckley. In Buckley, the Supreme Court upheld the $1,000 contribution limit with the admonition that contributions amounting to a "difference in kind" would not be approved. The situation today is very different. As argued in Section III of this Reply Memorandum, after twenty years of inflation and "skyrocketing costs of political campaigns," a $1,000 contribution limit is now quite "different in kind," properly reviewable, and an unconstitutional abridgment of the First Amendment. See, e.g., Women's Liberation Union of Rhode Island, 512 F.2d 106 (statute properly ruled unconstitutional where "authority of earlier precedents ha[d] waned ... with the metamorphosis of the attitudes which fed them").

III. AFTER TWENTY YEARS OF INFLATION AND "SKYROCKETING COSTS OF POLITICAL ADVERTISING," A $1,000 CAMPAIGN CONTRIBUTION LIMIT IS "DIFFERENT IN KIND" FROM A $1,000 LIMIT IN 1976.

In Buckley v. Valeo, the Supreme Court identified "the primary interest served by the limitations and indeed, by the act as a whole, is the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates' positions and on their actions if elected to office."

Buckley, supra at 25 (emphasis added). The Supreme Court reiterated in Citizens Against Rent Control v. Berkeley, 454 U.S. 290 (1981), that the compelling interest identified in Buckley was limiting large contributions to candidates. "Buckley identified a single narrow exception to the rule that limits on political activity were contrary to the First Amendment. The exception relates to the perception of undue influence of large contributions to a candidate." Ibid at 296. In Carver v. Nixon, 72 F.3rd 633, 638 (8th Cir. 1995) the Eighth Circuit noted, "The Supreme Court reiterated this interest at least seven times."

It is to prevent large individual contributions that the Court held the limitation was justified. Responding to the claim that "the $1,000 restriction is unrealistically low because much more than that amount would still not be enough to enable an unscrupulous contributor to exercise improper influence over a candidate or officeholder, especially in campaigns for statewide or national office," the plurality opinion in Buckley stated, "[s]uch distinctions in degree become significant only when they can be said to amount to differences in kind." Ibid at 30. The Court in Buckley pointed to two decisions as illustrating differences in kind: Rosario v. Rockefeller, 410 U.S. 752 (1973), where the Court approved a party enrollment provision for voting in a primary that could require an eight month cutoff date, and Kusper v. Pontikes, 414 U.S. 51 (1973), where it held that an almost two-year delay, nearly three times the delay allowed in Rosario, crossed the constitutional line, amounting to a "difference in kind" and violating the voter's right to free political association.

Federal courts have now begun to hold that some campaign contribution limits are too low and an abridgement of the First Amendment. In Day v. Hayes, 863 F. Supp. 940, 952 (D. Minn. 1994), the district court ruled that a $100 state contribution limit was "different in kind" and unconstitutional. The Court found that "the $100 limit is so low that it renders the

limit 'different in kind' from those previously upheld by other federal courts and concludes that the limit is not narrowly tailored to serve the government's compelling interest." Ibid. The court held, "[f]urther review of the record, economic data and relevant case law compels the Court to conclude the limit is too low to pass constitutional muster...." The Eighth Circuit affirmed, Day v. Holohan, 34 F.3rd 1356 (8th Cir. 1994), noting, "[a]mong the undisputed facts relied upon by the District Court is the fact that a $100 contribution in 1976 would have a value of $40.60 in 1994 dollars ." Ibid at 1366. The court held that the $100 limit is so low as to infringe upon the citizens' First Amendment right to political association and free political expression. The Eighth Circuit reiterated that a state $100 contribution limit was an unconstitutional "difference in kind" in Carver v. Nixon, 72 F.3rd 633 (8th Cir. 1995).

> The State simply argues that limits which are nearly four times as restrictive as the limits approved in *Buckley* are narrowly tailored... We hold that the Proposition A limits amount to a difference in kind from the limits in *Buckley*. The limits are not closely drawn to reduce corruption or the appearance of corruption associated with large campaign contributions.

Ibid at 644 (emphasis added). Accord, National Black Police Association v. District of Columbia Board of Elections, 924 F. Supp. 270 (D.D.C. 1996) (district court holding that a $100 contribution cap violated the First Amendment vacated in National Black Police Ass'n v. District of Columbia, 108 F. 3rd 346 (D.C. Cir. 1997), on grounds that the case was mooted by the passage of legislation increasing contribution limits[3]); Wilkinson v. Jones, 876 F. Supp.

[3] The enacted initiative at issue had limited contributions for Mayor, D.C. Council Chairman, or at-large Council members to a maximum of $100 per candidate, and contributions to ward Council member candidates or Board of Education member candidates to a maximum of $50 per candidate. In addition, contributors were prohibited from giving more than $600 to all candidates in any one election. New campaign legislation increased the initiative's contribution ceilings so that limits became $2,000 for mayoral candidates, $1,500 for Council Chairman candidates, $1,000 for at-large Council member candidates, $500 for ward council member

916, 929 (W.D. Ky. 1995) (a $100 limit was so low as to constitute a penalty imposed upon privately financed candidates, and not narrowly tailored to achieve the goal of thwarting quid pro quo corruption).

Even though there are a number of factors[4] which would allow lower contribution limits in state elections than in federal elections, the reasoning from these cases addressing state limits is still applicable – limits which are "too low" are unconstitutional. The "skyrocketing costs of political campaigns," Buckley, supra at 26, multiplied many times since 1976, make a $1,000 limit today different in kind than the $1,000 limit approved in 1976.[5]

For example, the Supreme Court in Citizens Against Rent Control v. City of Berkeley, 102 S.Ct. 434 (1981), cited the cost of a full page newspaper political advertisement in the course of its review of an ordinance placing limitations of $250 on contributions to

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candidates and at-large Board of Education member candidates, and $200 for Ward Board of Education member candidates, and changed the maximum cap on contributions per election to $8,500.

[4] Connolly, "How Low Can You Go? State Campaign Contribution Limits and the First Amendment," 76 Boston University Law Review 483, 532 (1996):

> In this respect, a court should be sensitive to several important differences between national, state, and local elections, differences that compensate for the effects of lower contribution limits. First, campaign costs at the state level are lower than at the national level. Candidates for state office need only appeal to a comparatively smaller electorate within a smaller geographical area. Unlike national candidates, state candidates need not necessarily rely on expensive media outlets to reach the public. A second and perhaps less obvious difference between national and state elections concerns the risk of improper access to candidates via campaign contributions. Given the smaller scale on which state campaigns operate, the same contribution in the state context could conceivably "buy" greater access than to a national candidate. At the state level, less can get you more. Accordingly, the reality and appearance of corruption is arguably triggered at a lower level. Moreover, the closer physical proximity of donors and local – as opposed to national – candidates bears greater significance for state efforts to foster public confidence and participation in the electoral process.

[5] This is demonstrated in the Proffer of Evidence filed with this Reply (the "Proffer").

committees formed to support or oppose ballot measures submitted to popular vote. In finding that the ordinance unconstitutionally contravened the First Amendment right of associated expression, the Court stated, "[t]he value of the right to associate is illustrated by the cost of reaching the public...The cost of a full-page advertisement in a Berkeley area newspaper, the Independent Gazette, was $1,620." Ibid at 437, fn.5 (emphasis added).

In considering the cost of political advertising, the cost of a full-page newspaper advertisement was also specifically addressed by the Supreme Court in Buckley v. Valeo. "The record indicates that, as of January 1, 1975, one full-page advertisement in a daily edition of a certain metropolitan newspaper cost $6,971.04 – almost seven times the annual limit on expenditures "relative to" a particular candidate imposed on the vast majority of individual citizens and associations by §608(e)(1)." Ibid at 21, fn. 20. The Buckley record shows that the newspaper cited was the Washington Post.[6] As the Proffer demonstrates here, the current cost of a full-page advertisement in a daily edition of the Washington Post has skyrocketed to $62,964 – an increase of 800%. $1,000 in 1976 would have contributed 1/7 towards a full-page ad; today, 1/60. A $1,000 contribution toward a $62,964 advertisement today is equivalent to a $110 contribution toward a $6,971 advertisement in 1976. Surely $110 would have been ruled unconstitutional as a contribution limitation in a presidential campaign in 1976.

The Buckley record also shows the cost of a full-page advertisement in the Sunday edition of the Washington post in 1976 was $7,712.64. Ibid. That cost has increased even more, and today is $85,351, an increase of 1,010%. A $1,000 contribution toward the cost of

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[6] Buckley v. Valeo, Nos. 75-436 and 75-437, Joint Appendix (Vol. II - Part A), District Court Findings, p. 32.

a Sunday advertisement today is equivalent to an $85 contribution toward a Sunday advertisement in 1976. An $85 campaign limit in 1976 would have certainly been "different in kind" than that approved in Buckley.

The increases in advertising costs of six of the major newspapers, taken from the Published Rate Cards of those newspapers, reflect an average percentage increase of 643%. See Affidavit of Alan Johnson ("Johnson Affidavit") attached to Proffer.[7] In other words, a $1,000 contribution today to defray the cost of one one-page advertisement in a major daily newspaper is equivalent to, on average, a $135 contribution in 1976.

This Court and the Supreme Court must conclude that the increase in cost of political advertisements since 1976 has resulted in a difference in kind. The effect is now a violation of the First Amendment protection of expression and this Court should so hold.[8]

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[7] Television costs have also increased significantly during the last twenty years, even in light of an overall one-third decrease in audience size. As shown in the Johnson Affidavit, the cost of reaching the same number of network TV (ABC, CBS and NBC) viewers has risen, on average, 381% since 1977. A $1,000 contribution today, then, defrays the cost of the same amount of network TV advertising as a $208 contribution in 1977.

[8] The emergence of so-called "soft money" as a fundraising mechanism provides further support for this Court's review of this case, not with the 1976 lens of Buckley v. Valeo, but as the Supreme Court would review it today. "'Soft money' denotes contributions to federally regulated campaign committees in excess of the aggregate amounts permitted for federal elections by the [Federal Election Campaign Act]; these contributions, even if directed to national campaign entities, are permissible if the money is not to be used in connection with federal elections." Common Cause v. Federal Election Com'n, 692 F.Supp. 1397, 1398 (D.D.C. 1988). See also Colorado Republican Campaign Committee v. FEC, 116 S.Ct. 2309, 2316 (1996). Indeed, the current controversy over the Attorney General's decision not to seek an Independent Counsel to investigate campaign contribution solicitations by the President and the Vice-President highlights the disparity between the limits on individual contributions directly to a particular candidate and the limitless "soft money" donations an individual may make for statutorily narrower purposes, but which, in reality, ultimately also benefit individual candidacies. See *Statement by Reno on Why She Did Not Seek an Independent Counsel*, N. Y. Times, December 3, 1997 ("Moreover, all donations were deposited into DNC soft-money accounts, which means they do not fall under the scope of the law, which plainly prohibits only the solicitation of hard money"). Such an arbitrary limitation on contributions to individual candidates, when contributions which more indirectly benefit those candidates are unregulated and unlimited, is an unconstitutional restriction of First Amendment free speech rights.

CONCLUSION

Therefore, for the foregoing reasons and those expressed in the Memorandum of Law in Support of §2255 Motion of Simon C. Fireman, the Motion under 28 U.S.C. §2255 should be allowed and his conviction be vacated as based upon the application of statutory provisions which are in violation of the First Amendment to the United States Constitution.

By his Attorneys,

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Dated: December 8, 1997
17399

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document(s) was served upon the attorney of record for each other party by hand-delivery - ~~US Mail~~ on _____

_____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SIMON C. FIREMAN, **Plaintiff** **v.** **UNITED STATES OF AMERICA,** **Defendant**	Civil Action No. 97-11188-WGY

Proffer of Evidence in Support of §2255 Motion of Simon C. Fireman

Pursuant to Rule 103 of the Federal Rules of Evidence and Belber v. Lipson 905 F.26 549, 551 fn.1 (1st Cir. 1990), the Defendant Simon C. Fireman hereby requests that the Court formally accept as evidence into the record of these proceedings the attached Affidavit of Alan Johnson separate from the Reply Memorandum To Government's Opposition To Petitioner's 28 U.S.C. §2255 Motion. Through this affidavit, the Defendant seeks to update the statistical information relied upon by the Supreme Court in Buckley v. Valeo, 424 U.S. 1 (1976), and believes that this information is necessary to this Court's analysis of the current motion.

By his Attorneys,

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CERTIFICATE OF SERVICE
I hereby certify that a true copy of the above document was served upon the attorney of record for each other party (by hand) on _____

Dated: December 8, 1997
19075

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA **v.** **SIMON C. FIREMAN and** **AQUA-LEISURE INDUSTRIES, INC.**	Criminal No. 96-10187-WGY

Affidavit of Alan B. Johnson

I, Alan B. Johnson, hereby depose and state:

1. I develop, implement and manage programs using paid media to advertise client messages to their desired target audiences.
2. I have been actively involved in the planning and purchase of such media programs since 1970 and have been employed by some of the country's largest and most respected advertising firms, including Benton & Bowles; Geer, DuBois and Bozell, Jacobs Kenyon & Eckhardt. I currently serve as Senior Vice President, Director of Media Services for Mullen Advertising, a position I have held for eleven years.
3. Mullen Advertising, located in Boston, Massachusetts, is an advertising agency dealing with both national and local advertising accounts. We place approximately $150 million annually in paid television, radio, magazine, newspaper and outdoor advertising. In the course of our business, therefore, we regularly monitor the costs of advertising in all major media. All of these activities are carried out with my direct involvement or supervision.
4. I was asked by counsel for Simon Fireman, a defendant in this matter, to research current market rates for a variety of paid media and to compare the current rates to those in force for 1976 - 1977, with appropriate adjustments to reflect any changes in the size of each medium's audience. In short, I was asked to assess the impact of inflation on the ability of a constant dollar expenditure to create a "consumer" advertising impression. The results of my search and analysis are attached to this Affidavit.
5. To assess inflationary impact across the major media categories I utilized the resources of the American Association of Advertising Agencies. This association is the official organization of the advertising industry in the US, with membership of more than 4,000 businesses. Among its services, the AAAA collects a wide range of business information and maintains this in a library accessible to all members. In researching this project, I availed myself of the historical media cost information

held by the AAAA, and periodically published by them in their *Media Letter* and *AAAA Bulletin*. The information resources of the AAAA are commonly acknowledged in the industry to be among the most complete and accurate available, and are routinely used and quoted by professionals in the field.

I also used *Media Dynamics*, an annual compendium of media cost and audience information, to gauge the historical changes in audience size for the various media categories evaluated. Like AAAA information, this source is widely used and is regarded as reliable and accurate by media professionals.

6. For specific newspaper cost and circulation information I relied upon the published rate cards of the individual newspapers for the years 1976 and 1997. These rate bulletins are published by the newspapers and are used to govern pricing and policies for all advertisers. They are indisputably the most accurate source of rate and circulation information available. I have attached a copy of one rate card for the Court's information.

Signed under the penalties of perjury this 5th day of December, 1997.

Alan B. Johnson

Media Cost Inflation
1976 - 1997
Adjusted For Changes In Audience Size

General Media Cost Inflation

Sources: American Association of Advertising Agencies
Media Dynamics, Inc.

Medium	1977 Value	1997 Cost	Audience Change	Adjusted % Cost Increase
Network TV (1)	$100	$318	-33%	381%
Magazines (2)	$100	$325	N/C	225%
Local TV (3)	$100	$275	-33%	317%
Local Radio (3)	$100	$268	N/C	168%
Outdoor (4)	$100	$328	N/C	228%

(1) Average of ABC, CBS and NBC networks reflecting all dayparts - early morning, day, news and prime.
(2) Average of a representative sample of national magazines.
(3) Average for locally purchased spots in markets across the US and representative of all dayparts.
(4) Average of bulletins (14' X 40') and posters (12' X 24') in markets across US.

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Media Cost Inflation
1976 - 1997
Adjusted For Changes In Audience Size

Newspaper Cost Inflation
Source: Published rate cards of specified newspapers

Medium	1976 Page Cost	1997 Page Cost	% Cost Increase	Circulation Change	Adjusted % Cost Increase
Boston Globe					
- Weekday	$6,829	$36,603	436%	+6%	406%
- Sunday	7,772	43,520	341%	+27%	341%
NY Times					
- Weekday	$12,288	$73,710	500%	+31%	358%
- Sunday	14,568	82,668	467%	+16%	389%
Washington Post					
- Weekday	$6,971	$62,964	803%	+57%	475%
- Sunday	7,713	85,351	1010%	+60%	592%
LA Times					
- Weekday	$ 9,000	$75,400	738%	+2%	718%
- Sunday	10,800	93,428	765%	+23%	605%
SF Chronicle					
- Weekday	$7,248	$45,666	530%	+6%	493%
- Sunday	8,741	53,664	514%	-1%	519%
Chicago Tribune					
- Weekday	$8,183	$59,976	633%	+1%	628%
- Sunday	9,824	84,168	757%	-7%	818%

Mullen 12/05/97

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SIMON C. FIREMAN, **Plaintiff** **v.** **UNITED STATES OF AMERICA,** **Defendant**	Civil Action No. 97-11188-WGY

PETITIONER'S REPLY TO GOVERNMENT'S FURTHER MEMORANDUM IN OPPOSITION TO MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE

The Petitioner Simon C. Fireman replies to the Government's Further Memorandum in Opposition to his §2255 Motion as follows:

I. THE PETITIONER WAS IN PROBATIONARY CUSTODY AT THE TIME OF THE FILING OF THE §2255 MOTION AND THUS HAS STANDING.

The Petitioner was on probation at the time of the filing of his §2255 Motion and thus has standing to bring the Motion. It is clear that probation is considered custodial for purposes of §2255. Jones v. Cunningham, 371 U.S. 236, 240-43 (1962); Justices of the Boston Municipal Court v. Lydon, 466 U.S. 294, 301 (1984); Leftkowitz v. Fair, 816 F.2d 17, 19 (1st Cir. 1987).

A petitioner has standing even if no longer on probation as long as the motion was filed while he was on probation. Carafas v. LaVallee, 391 U.S. 234 (1968). United States v. Michaud, 901 F.2d 5 (1st Cir. 1990), relied on by the Government, is not on point. In that case, the petitioner had sought relief from a fine after he had been released from custody.

"The government's opposition to the §2255 motion stated that because Michaud had completely served the sentence imposed and was not under probation, parole, or continuing supervision, the petitioner was not 'in custody' and thus not entitled to §2255 relief." Ibid. at p. 6. In the instant case, the Petitioner sought relief while he was still on probation and thereby has standing.

The Government suggests at p. 4 of its Further Memorandum in Opposition that the only count for which Petitioner received probation was Count I, but the Judgment imposed a sentence of home confinement, probation and fine without particularizing as to counts. (Judgment attached hereto as Attachment #1). The Judgment is the controlling document. "The only sentence known to the law is the sentence or judgment entered upon the records of the court." Hill v. U.S., ex rel. Wampler, 298 U.S. 460, 464 (1936); Greene v. United States, 358 U.S. 326, 329 (1959).

Pursuant to Rule 55 of the Federal Rules of Criminal Procedure, the judgment in a case must be entered in the criminal docket. Rule 55 provides, "Among the records required to be kept by the clerk shall be a book known as the 'criminal docket' in which, among other things, shall be entered each order or judgment of the court." The docket sheet in this case (a certified copy of which is attached hereto as Attachment #2), breaks down the counts of conviction and for each count shows the same disposition of home confinement, probation, and fine. For counts 71-73, the docket sheet states at pp. 3-4:

2:441a(a) and 437g(d) Contributions in excess of $1,000.00 statutory limit. (71-73)	The defendant is hereby placed on probation for a term of 1 year. Special conditions of supervision – The first six (6) months of probation are to be served in HOME CONFINEMENT with ELECTRONIC MONITOR at the expense of the defendant. While in confinement the defendant may leave the home to attend religious services and

> to attend doctor visits for himself. The defendant may go out in his yard for one (1) hour in the morning and one (1) hour in the afternoon. If the defendant wishes the use of a telephone, he must have a phone installed that can be monitored by US Probation Officer. This phone must be installed at the expense of the defendant. Telephone calls are limited to the number and kind of a prisoner at the Federal Detention Center in Plymouth. Likewise, the defendant is limited to the number of visitors of a prisoner at the Federal Detention Center in Plymouth. There will be no entertaining by the defendant. If his wife entertains, the defendant must remove himself from the room. The terms of these restrictions are to commence (3) weeks from this date, or on 11/13/96. A special assessment of $300.00 is to be paid immediately. The court also imposes a fine in the amount of $1,000,000.00. (71-73)

The Petitioner has standing to challenge the constitutionality of the statute for the additional reason that the $1,000 limit violation and the other violations charged are inextricably intertwined. But for the $1,000 limit, arguably now unconstitutional on its face, the other violations would not have occurred. The other provisions charged thus become unconstitutional as applied, as the acts are all hand-in-glove with each other. Steffel v. Thompson, 415 U.S. 452, 474 (1974); Whiting v. Town of Westerly, 942 F.2d 18, 21, fn. 1 (1st Cir. 1991).

Further, there is a question as to whether an unconstitutionally low $1,000 limitation on contributions would be severable from the rest of the statute. The statute was held severable in Buckley v. Valeo, 424 U.S. 1 (1976) (per curiam), with the $1,000 limit left standing, notwithstanding the several sections held unconstitutional. Had that provision been declared unconstitutional also, the entire statute would have likely fallen. Shrink Missouri

Government PAC v. Maupin, 71 F.3rd 1422 (8th Cir. 1995) (declarations and disclosures relating to campaign expenditures not severable where expenditure limits declared unconstitutional in violation of First Amendment). Thus, in the circumstances of this case, a constitutional challenge to the $1,000 limit provision is a challenge to the statute and the conviction as a whole.

II. A COLLATERAL ATTACK ON THE CONSTITUTIONALITY OF THE STATUTE IS PROPER, A SHOWING OF CAUSE FOR NOT FILING AN APPEAL IS NOT NECESSARY HERE, AND THE PETITIONER HAS SHOWN CAUSE.

United States v. Frady, 456 U.S. 152 (1981), and the other cases relied on by the Government do not "procedurally bar" Petitioner's §2255 Motion. While some cases cited by the Government involve constitutional claims, none, except for Robinson-Munoz v. United States, 819 F. Supp. 1136 (D. Puerto Rico 1993), go to the constitutionality of the underlying statute, and in that case the court did not rule that the claim was procedurally barred. Such a claim is jurisdictional, as this Court noted at oral argument and as the First Circuit has indicated, and may be raised at any time. The Government cites no cases to the contrary.

It is true that the District Judge stated in Robinson-Munoz, supra at p.1144, as quoted by the Government in its Further Memorandum at p.12, "Petitioner has not shown 'cause' as to why he failed to raise these issues either at trial or on appeal or how prejudice entitles him to raise them now." However, the Government neglected to quote or refer to the very next sentence in the opinion, where the court stated, "However, given the potential constitutional implications, we will not treat these issues as barred and will consider them on their merits." Ibid. (emphasis added). The district court in Robinson-Munoz then proceeded to rule on the constitutionality of the underlying statute (holding it to be constitutional).

A collateral attack on the constitutionality of the statute is proper without the necessity of a prior appeal. Valencia v. United States, 923 F.2d 917, 921 (1st Cir. 1991), where the First Circuit ruled that "[a] valid guilty plea does not waive jurisdictional defects," was a §2255 case where no direct appeal had been taken.

Citing Valencia, supra, cases from its own circuit, cases from other circuits[1], and commentators[2], the Ninth Circuit expressly held, in discussing a guilty plea and Frady requirements, "Whatever the scope of the cause and prejudice requirement, it clearly does not bar review when a defendant raises a jurisdictional claim, such as the invalidity of the statute under which the defendant was convicted." Chambers v. United States, 22 F.3rd 939, 945 (9th Cir. 1994) (emphasis in original). "Because [petitioner] asserts a jurisdictional claim, his failure to challenge the constitutionality of the statute in the district court prior to this plea or in this court on direct review does not bar him from raising the claim for the first time in a §2255 proceeding." Ibid. at 946. The Ninth Circuit concluded, "Even after Frady, §2255 relief remains available for prisoners who assert jurisdictional claims, notwithstanding their failure to raise them at trial or on direct review." Ibid.

As noted in the Reply Memorandum to Government's Opposition to Petitioner's 28 U.S.C. §2255 Motion, p. 2, fn. 1, it is a matter of record in this case that the Petitioner was not

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[1] United States v. Harper, 901 F.2d 471, 473-74 (5th Cir. 1990) (§2255 case where no direct appeal was taken) ("Failure to charge an offense may be raised for the first time in a §2255 petition because such an error divests the sentencing court of jurisdiction"); United States v. Barboa, 777 F.2d 1420, 1423 n. 3 (10th Cir. 1985) (§2255 case where no direct appeal was taken) ("If Barboa pled guilty to something which was not a crime, he is not precluded from raising this jurisdictional defect which goes 'to the very power of the State to bring the defendant into court to answer the charge brought against him.'") (quoting Blackledge v. Perry, 417 U.S. 21, 30 (1974).

[2] Henry J. Friendly, "Is Innocence Irrelevant? Collateral Attack on Criminal Judgments," 38 U.Chi. L. Rev. 142, 151-52 (1970); Paul M. Bator, "Finality in Criminal Law and Federal Habeas Corpus for State Prisoners," 76 Harv. L. Rev. 441, 460-62 (1963).

informed and was unaware of his right to challenge the constitutionality of the statute as part of the pleadings in the case. In the Affidavit of Simon C. Fireman in Support of Complaint for Declaratory Judgment (Attachment 1 to Complaint for Declaratory Judgment), the Petitioner stated, "If I had been so informed, I would have sought to make such a challenge . . . ." Just as Petitioner "should not be held accountable for his trial counsel's failure to raise an issue on direct appeal which challenges that counsel's own performance," Williams v. United States, 805 F.2d, 301, 1309 (7th Cir. 1986), so he should not be held accountable for failure to challenge the constitutionality of the statute until informed by new counsel that the statute was arguably unconstitutional.

Thus, the Petitioner need not show cause why he did not challenge the constitutionality of the statute on appeal, and cause nonetheless has been shown. The Petitioner has suffered "actual prejudice" from being charged and convicted under an arguably unconstitutional statute. Consequently, this Court should rule on the constitutionality of the statute and declare it invalid as violative of the First Amendment.

CONCLUSION

Therefore, for the foregoing reasons and those expressed in the Memorandum of Law in Support of §2255 Motion of Simon C. Fireman and the Reply Memorandum to Government's Opposition to Petitioner's 28 U.S.C. §2255 Motion, the Motion under 28 U.S.C. §2255 should be allowed and Petitioner's conviction vacated as based upon the application of statutory provisions which are in violation of the First Amendment to the United States Constitution.

By his Attorneys,

Morris M. Goldings (RSJ)

Morris M. Goldings, BBO #198800
Richard S. Jacobs, BBO #249480
MAHONEY, HAWKES & GOLDINGS
75 Park Plaza
Boston, Massachusetts 02116
Tel: 617-457-3100

Dated: January 12, 1998
20213

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document(s) was served upon the attorney of record for each other party by hand-delivery - ~~U.S. Mail~~ on Jan 12, 1998.

Richard S. Jacobs

ATTACHMENT 1

United States District Court

District of Massachusetts

UNITED STATES OF AMERICA
v.
SIMON C. FIREMAN

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: 1:96CR10187-001

A.John Pappalardo
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) 1,2-8,71-73

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. § 371	Conspiracy to Defraud	07/10/1996	1
2 U.S.C. § 441 f	Contributions in the Name of an Individual Other than the True Donor	02/16/1995	2-8
2 U.S.C. § 437 g (d)	Contributions in the Name of Another Other than the True Donor	2/16/1995	2-8
2 U.S.C. § 441 a (a)	Contributions in Excess of $1,000 Statutory Limit	08/31/1993	71-73

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 013-12-4562
Defendant's Date of Birth: 09/10/1925
Defendant's USM No.: 21202-038
Defendant's Residence Address:
1001 Marina Drive
Quincy MA 02171
Defendant's Mailing Address:
1001 Marina Drive
Quincy MA 02171

10/23/1996
Date of Imposition of Judgment

William G. Young
Signature of Judicial Officer

William G. Young
USDJ
Name & Title of Judicial Officer

Oct 28, 1996
Date

9304394660

DEFENDANT: SIMON C. FIREMAN

CASE NUMBER: 1:96CR10187-001

PROBATION

The defendant is hereby placed on probation for a term of 1 year(s).

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of probation that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page (if indicated below).

See Special Condition of Supervision - Sheet 4.01

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such

DEFENDANT: SIMON C. FIREMAN

CASE NUMBER: 1:96CR10187-001

SPECIAL CONDITIONS OF SUPERVISION

The first six (6) months of Probation are to be served in HOME CONFINEMENT with ELECTRONIC MONITOR at the expense of the Defendant. While in Confinement the Defendant may leave the home to attend religious services and to attend doctor visits for himself. The Defendant may go out in his yard for one (1) hour in the morning and one(1) hour in the afternoon. If the Defendant wishes the use of a telephone, he must have a phone installed that can be monitored by US Probation Officer. This phone must be installed at the expense of the Defendant. Telephone calls are limited to the number and kind of a prisoner at the Federal Detention Center in Plymouth. Likewise, the Defendant is limited to the number of visitors of a prisoner at the Federal Detention Center in Plymouth. There will be no entertaining by the Defendant. If his wife entertains, the Defendant must remove himself from the room. The terms of these restrictions are to commence three(3) weeks from this date, or on 11/13/96.

DEFENDANT: SIMON C. FIREMAN

CASE NUMBER: 1:96CR10187-001

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessment	Fine	Restitution
Totals:	$ 300.00	$ 1,000,000.00	$

☐ If applicable, restitution amount ordered pursuant to plea agreement . . . . . $ _____

FINE

The above fine includes costs of incarceration and/or supervision in the amount of $ _____

The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

__ The interest requirement is waived.

__ The interest requirement is modified as follows:

RESTITUTION

__ The determination of restitution is deferred in a case brought under Chapters 109A, 110, 110A and 113A of Title 18 for offenses committed on or after 09/13/1994, until _____. An Amended Judgment in a Criminal Case will be entered after such determination.

☐ The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

Name of Payee	** Total Amount of Loss	Amount of Restitution Ordered	Priority Order or Percentage of Payment

Totals: $ _____ $ _____

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994.

DEFENDANT: SIMON C. FIREMAN

CASE NUMBER: 1:96CR10187-001

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A [X] in full immediately; or

B [ ] $ _____ immediately, balance due (in accordance with C, D, or E); or

C [ ] not later than _____ ; or

D [ ] in installments to commence _____ day(s) after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or

E [ ] in _____ *(e.g. equal, weekly, monthly, quarterly)* installments of $ _____ over a period of _____ year(s) to commence _____ day(s) after the date of this judgment.

The National Fine Center will credit the defendant for all payments previously made toward any criminal monetary penalties imposed.

Special instructions regarding the payment of criminal monetary penalties:

[ ] The defendant shall pay the cost of prosecution.

[ ] The defendant shall forfeit the defendant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the United States Courts National Fine Center, Administrative Office of the United States Courts, Washington, DC 20544, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program. If the National Fine Center is not operating in this district, all criminal monetary penalty payments are to be made as

DEFENDANT: SIMON C. FIREMAN
CASE NUMBER: 1:96CR10187-001

STATEMENT OF REASONS

___ The court adopts the factual findings and guideline application in the presentence report.

OR

[x] The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

The Court has recalculated the applicable guidelines (see Transcript Attached)

Guideline Range Determined by the Court:

Total Offense Level: 16/19/10 = 15

Criminal History Category: I

Imprisonment Range: 18 to 24 months

Supervised Release Range: 2 to 3 years

Fine Range: $ 4,000 to $ 40,000

___ Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: $ _____

___ Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims pursuant to 18 U.S.C. § 3663(a)(1)(B)(ii).

___ For offenses that require the total amount of loss to be stated pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.

___ Partial restitution is ordered for the following reason(s):

___ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

___ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

[x] The sentence departs from the guideline range:

___ upon motion of the government, as a result of defendant's substantial assistance.

[x] for the following specific reason(s):

SEE TRANSCRIPT ATTACHED

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ATTACHMENT 2

U.S. District Court
U.S. District Court - Massachusetts (Boston)

CRIMINAL DOCKET FOR CASE #: 96-CR-10187-ALL

USA v. Fireman, et al
Dkt# in other court: None

Filed: 07/10/96

Case Assigned to: Judge William G. Young

SIMON C. FIREMAN (1)
Defendant
[term 10/30/96]

Thomas E. Dwyer, Jr.
[term 10/30/96]
[COR LD NTC ret]
Dwyer & Collora
600 Atlantic Avenue
Federal Reserve Plaza
Boston, MA 02210-2211
617-371-1000

A. John Pappalardo
[term 10/30/96]
[COR LD NTC ret]
600 Atlantic Avenue
Boston, MA 02210
371-1100

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
BY

Pending Counts:	Disposition
18:371 CONSPIRACY TO DEFRAUD THE UNITED STATES (1)	The defendant is hereby placed on probation for a term of 1 year. Special conditions of supervision---The first six (6) months of probation are to be served in HOME CONFINEMENT with ELECTRONIC MONITOR at the expense of the defendant. While in confinement the defendant may leave the home to attend religious services and to attend doctor visits for himself. The defendant may go out in his yard for one (1) hour in the morning and one (1) hour in the afternoon. If the defendant wishes the use of a telephone, he must have a phone installed that can be monitored by US Probation Officer. This phone must be installed at the expense of the defendant. Telephone calls are limited to the number and kind of a prisoner at the

	Federal Detention Center in Plymouth. Likewise, the defendant is limited to the number of visitors of a prisoner at the Federal Detention Center in Plymouth. There will be no entertaining by the defendant. If his wife entertains, the defendant must remove himself from the room. The terms of these restrictions are to commence three (3) weeks from this date, or on 11/13/96. A special assessment of $300.00 is to be paid immediately. The court also imposes a fine in the amount of $1,000,000.00. (1)
2:441f and 437g(d) contributions in the name of an individual other than the true donor. (2 - 8)	The defendant is hereby placed on probation for a term of 1 year. Special conditions of supervision---The first six (6) months of probation are to be served in HOME CONFINEMENT with ELECTRONIC MONITOR at the expense of the defendant. While in confinement the defendant may leave the home to attend religious services and to attend doctor visits for himself. The defendant may go out in his yard for one (1) hour in the morning and one (1) hour in the afternoon. If the defendant wishes the use of a telephone, he must have a phone installed that can be monitored by US Probation Officer. This phone must be installed at the expense of the defendant. Telephone calls are limited to the number and kind of a prisoner at the Federal Detention Center in Plymouth. Likewise, the defendant is limited to the number of visitors of a prisoner at the Federal Detention Center in Plymouth. There will be no entertaining by the

	defendant. If his wife entertains, the defendant must remove himself from the room. The terms of these restrictions are to commence three (3) weeks from this date, or on 11/13/96. A special assessment of $300.00 is to be paid immediately. The court also imposes a fine in the amount of $1,000,000.00. (2 - 8)
2:441a(a) and 437g(d) Contributions in excess of $1,000.00 statutory limit. (71 - 73)	The defendant is hereby placed on probation for a term of 1 year. Special conditions of supervision---The first six (6) months of probation are to be served in HOME CONFINEMENT with ELECTRONIC MONITOR at the expense of the defendant. While in confinement the defendant may leave the home to attend religious services and to attend doctor visits for himself. The defendant may go out in his yard for one (1) hour in the morning and one (1) hour in the afternoon. If the defendant wishes the use of a telephone, he must have a phone installed that can be monitored by US Probation Officer. This phone must be installed at the expense of the defendant. Telephone calls are limited to the number and kind of a prisoner at the Federal Detention Center in Plymouth. Likewise, the defendant is limited to the number of visitors of a prisoner at the Federal Detention Center in Plymouth. There will be no entertaining by the defendant. If his wife entertains, the defendant must remove himself from the room. The terms of these restrictions are to commence three (3) weeks from this date, or on 11/13/96. A special assessment of $300.00 is to be

paid immediately. The court also imposes a fine in the amount of $1,000,000.00. (71 - 73)

Offense Level (opening): 4

Terminated Counts:

NONE

Complaints:

NONE

==========

Case Assigned to: Judge William G. Young

CAROL A. NICHOLS (2) Defendant [term 11/21/96]	Martin K. Leppo [term 11/21/96] [COR LD NTC ret] 15 South Main Street Randolph, MA 02368 617-961-3344

Pending Counts:	Disposition
18:371 CONSPIRACY TO DEFRAUD THE UNITED STATES (1)	The dft is sentenced to 4 month Probation with home confinement on electronic monitor to be paid for by the dft. While on home confinement the dft may leave the home to go to work, attend religious services, attend to medical needs and shop for necessities. The dft may have no verbal communication with co-dft Fireman, but may communicate through written correspondence. Copiues of all such correspondence must be given to Probation. (1)

Offense Level (opening): 4

Proceedings include all events.
1:96cr10187-ALUSA v. Fireman, et al

Terminated Counts:

NONE

Complaints:

NONE

==========

Case Assigned to: Judge William G. Young

AQUA-LEISURE INDUSTRIES, INC. (3) Defendant [term 10/30/96]	Robert P. Sherman [term 10/30/96] [COR LD NTC ret] Hutchins, Wheeler & Dittmar 101 Federal Street Boston, MA 02110 617-951-6600

Pending Counts:	Disposition
2:441f and 437g(d) Contributions in the name of an individual other than the true donor. (2 - 70)	The defendant is hereby place on probation for a term of 4 years. The court imposes a special assessment of $8,750.00 to be paid immediately. The court also imposes a fine of $5,000,000.00. (2 - 70)
2:441b(a) and 437g(d) Prohibited contributions by corporation. (74)	The defendant is hereby place on probation for a term of 4 years. The court imposes a special assessment of $8,750.00 to be paid immediately. The court also imposes a fine of $5,000,000.00. (74)

Offense Level (opening): 3

Terminated Counts:

NONE

Proceedings include all events.
1:96cr10187-ALUSA v. Fireman, et al

Complaints:

NONE

U. S. Attorneys:

Joseph F. Savage, Jr.
[COR LD NTC]
United States Attorney's Office
Economic Crimes Division
1100 POCH Building P.O. Square
Boston, MA 02109
617-223-9400

9804309446679

Proceedings include all events.
1:96cr10187-ALUSA v. Fireman, et al

7/10/96	--	Felony Information received for filing . Simon C. Fireman (1) count(s) 1, 2-8, 71-73, Carol A. Nichols (2) count(s) 1, Aqua-Leisure (3) count(s) 2-70, 74 (fbd) [Entry date 07/10/96]
7/11/96	1	Joint MOTION by USA and defendants , as to Simon C. Fireman, Carol A. Nichols, Aqua-Leisure for Rule 11 Hearing , filed. (efs) [Entry date 07/11/96]
7/19/96	2	MOTION by Carol A. Nichols to continue date of arraignment and entry of plea , filed. (dms) [Entry date 07/19/96]
7/19/96	3	CERTIFICATE OF SERVICE by Carol A. Nichols , re service of [2-1] motion to continue date of arraignment and entry of plea , filed. (dms) [Entry date 07/19/96]
7/22/96	4	Memorandum relating to rule 11(e)(1)(c) plea procedures by USA as to Simon C. Fireman, Aqua-Leisure (dms) [Entry date 07/22/96]
7/22/96	--	Judge William G. Young . ENDORSED ORDER as to Carol A. Nichols : granting [2-1] motion to continue date of arraignment and entry of plea as to Carol A. Nichols (2), reset Arraignment for 7/29/96 for Carol A. Nichols . cc/cl (dms) [Entry date 07/25/96]
7/22/96	5	NOTICE of Appearance of counsel for Simon C. Fireman , by Attorney . (dms) [Entry date 07/25/96]
7/22/96	6	NOTICE of Appearance of counsel for Simon C. Fireman , by Attorney A. John Pappalardo. (dms) [Entry date 07/25/96]
7/22/96	7	NOTICE of Appearance of counsel for Aqua-Leisure , by Attorney Robert P. Sherman. (dms) [Entry date 07/25/96]
7/22/96	--	Initial appearance as to Simon C. Fireman, Aqua-Leisure held (Defendant informed of rights.) . (dms) [Entry date 07/29/96]
7/22/96	8	WAIVER OF INDICTMENT by Simon C. Fireman , filed. (dms) [Entry date 07/29/96]
7/22/96	9	INFORMATION filed as to Simon C. Fireman, Aqua-Leisure (dms) [Entry date 07/29/96]
7/22/96	--	Arraignment as to Simon C. Fireman, Aqua-Leisure held Simon C. Fireman (1) count(s) 1, 2-8, 71-73, Aqua-Leisure (3) count(s) 2-70, 74 . (dms) [Entry date 07/29/96]
7/22/96	--	PLEA entered by Simon C. Fireman, Aqua-Leisure . Court accepts plea. Not Guilty: , Simon C. Fireman (1) count(s) 1, 2-8, 71-73, Aqua-Leisure (3) count(s) 2-70, 74 (dms) [Entry date 07/29/96]

Proceedings include all events.
1:96cr10187-AUSA v. Fireman, et al

7/22/96	10	Judge William G. Young . CLERK'S NOTES as to Simon C. Fireman, Aqua-Leisure , re: arraignment;, set further hearing for 2:00 10/8/96 for Simon C. Fireman, for Aqua-Leisure Defendants agree that a pre sentence report be prepared. Court imposes no bail-personal recognizance--Procedural Order re: sentencing issues. Further hearing set for Tue. Oct. 8, 1996 at 2:00 p.m. ; Court Reporter: Womack (dms) [Entry date 07/29/96]
7/22/96	11	Judge William G. Young . Procedural order re sentencing hearing as to Simon C. Fireman, Aqua-Leisure entered. Sentencing for 2:00 10/8/96 for Simon C. Fireman, for Aqua-Leisure before Judge William G. Young Final pre-sentence report due 9/30/96 (dms) [Entry date 07/29/96]
7/29/96	--	Initial appearance as to Carol A. Nichols held (Defendant informed of rights.) . (dms) [Entry date 08/06/96]
7/29/96	12	WAIVER OF INDICTMENT by Carol A. Nichols , filed. (dms) [Entry date 08/06/96]
7/29/96	13	INFORMATION filed as to Carol A. Nichols (dms) [Entry date 08/06/96]
7/29/96	--	Arraignment as to Carol A. Nichols held Carol A. Nichols (2) count(s) 1 . (dms) [Entry date 08/06/96]
7/29/96	--	PLEA entered by Carol A. Nichols . Court accepts plea. Not Guilty: , Carol A. Nichols (2) count(s) 1 (dms) [Entry date 08/06/96]
7/29/96	14	Judge William G. Young . CLERK'S NOTES as to Carol A. Nichols , re: arraignment;Arraignment of dft. Carol Nichols held--Waiver of indictment filed--Initial appearance--First appearance through counsel--Ntc. of appearance of Martin Leppo filed--Dft pleads not guilty to count 1; Court Reporter: Womack (dms) [Entry date 08/06/96]
7/29/96	15	NOTICE of Appearance of counsel for Carol A. Nichols , by Attorney Martin Leppo . (dms) [Entry date 08/06/96]
7/29/96	16	Judge William G. Young . Procedural order re sentencing hearing as to Carol A. Nichols entered. set Sentencing for 2:00 10/8/96 for Carol A. Nichols cc/cl (dms) [Entry date 08/06/96]
10/21/96	17	MOTION by Carol A. Nichols to continue date of entry of plea , filed. (dms) [Entry date 10/21/96]
10/21/96	18	SENTENCING MEMORANDUM by Simon C. Fireman , filed. (dms) [Entry date 10/22/96]
10/22/96	19	SENTENCING MEMORANDUM by USA as to Simon C. Fireman, Carol A. Nichols, Aqua-Leisure , filed. (efs)

[Entry date 10/22/96]

10/23/96 -- Change of Plea Hearing as to Simon C. Fireman, Aqua-Leisure held . (dms) [Entry date 10/30/96]

10/23/96 20 Plea Agreement as to Simon C. Fireman , filed. (dms) [Entry date 10/30/96]

10/23/96 -- PLEA entered by Simon C. Fireman, Aqua-Leisure . Court accepts plea. Guilty: Simon C. Fireman (1) count(s) 1, 2-8, 71-73, Aqua-Leisure (3) count(s) 2-70, 74 (dms) [Entry date 10/30/96]

10/23/96 -- Sentencing held Simon C. Fireman (1) count(s) 1, 2-8, 71-73, Aqua-Leisure (3) count(s) 2-70, 74 . (dms) [Entry date 10/30/96]

10/23/96 21 Judge William G. Young . CLERK'S NOTES as to Simon C. Fireman, Aqua-Leisure , re: change of plea and sentencing; Plea agreements filed. Dfts. sworn. Court conducts plea colloguy with dfts.. After colloguy, court accepts plea of guilty from Aqua Leisure to counts 2-70, 74. Sentencing hearing held as to Aqua Leisure. After hearing th court imposes the following sentence: Aqua Leisure is to pay a fine of $5,000,000 to be paid as follows: $1,000,000 to be paid within 14 days of conviction. The remainin $4,000,000 is to be paid in 8 installments at $500,000 each every 6 months beginning 6 months after sentence. Aqua Leisure is on probation for 4 years and is to pay a special assessment of $8,750.00. As to Simon Fireman: Court hold hearing re: plea agreement and guidelines. After hearing th court accepts plea of guilty from Simon Fireman on counts 1,2-8,71-73. court announces guideline calculations. Sentencing hearing held. After hearing the court imposes the following sentence. As to counts 2-8, 71-73 Fine of $1,000,000.00. As to count 1--Probation--1 year-the first 6 months to be spent in home confinement with electronic, the cost of which is to be borne by the defendant. The defendant is further restricted while confined to the home in the following manner: He may leave the home to attend religious services or attend doctor visits for himself only. He may go out in his yard for 1 hour in the morning and 1 hour in the afternoon. He is to install a phone that can be monitored by probation and make and receive only the number of calls that are allowable to an inmate at the Federal Detention Center in Plymouth. The defendant is to pay for the installation of the phone. He is limited to the number of visitors of an inmate at Plymouth. No entertaining. The home confinement is to begin 3 weeks from this date; Court Reporter: Womack (dms) [Entry date 10/30/96]

Proceedings include all events.
1:96cr10187-ALUSA v. Fireman, et al

10/24/96 --		Judge William G. Young . ENDORSED ORDER as to Carol A. Nichols : granting [17-1] motion to continue date of entry of plea as to Carol A. Nichols (2). cc/cl (dms) [Entry date 10/24/96]
10/28/96	22	Judge William G. Young . JUDGMENT entered Aqua-Leisure (3) count(s) 2-70, 74 . The defendant is hereby placed on probation for a term of 4 years. The court imposes a special assessment of $8,750.00 to be paid immediately. The court also imposes a fine of $5,000,000.00. (dms) [Entry date 10/30/96]
10/28/96	23	Judge William G. Young . JUDGMENT entered Simon C. Fireman (1) count(s) 1, 2 -8 , 71 -73 . The defendant is hereby placed on probation for a term of 1 year. Special conditions of supervision---The first six (6) months of probation are to be served in HOME CONFINEMENT with ELECTRONIC MONITOR at the expense of the defendant. While in confinement the defendant may leave the home to attend religious services and to attend doctor visits for himself. The defendant may go out in his yard for one (1) hour in the morning and one (1) hour in the afternoon. If the defendant wishes the use of a telephone, he must have a phone installed that can be monitored by US Probation Officer. This phone must be installed at the expense of the defendant. Telephone calls are limited to the number and kind of a prisoner at the Federal Detention Center in Plymouth. Likewise, the defendant is limited to the number of visitors of a prisoner at the Federal Detention Center in Plymouth. There will be no entertaining by the defendant. If his wife entertains, the defendant must remove himself from the room. The terms of these restrictions are to commence three (3) weeks from this date, or on 11/13/96. A special assessment of $300.00 is to be paid immediately. The court also imposes a fine in the amount of $1,000,000.00. (dms) [Entry date 10/30/96]
10/30/96 --		**JS3 Closing Card for Aqua-Leisure Terminated Defendant Aqua-Leisure (dms) [Entry date 10/30/96]
10/30/96 --		**JS3 Closing Card for Simon C. Fireman Terminated Defendant Simon C. Fireman (dms) [Entry date 10/30/96]
11/4/96 --		Change of Plea Hearing as to Carol A. Nichols held . (efs) [Entry date 11/21/96]
11/4/96 --		PLEA entered by Carol A. Nichols . Court accepts plea. Guilty: Carol A. Nichols (2) count(s) 1 (efs) [Entry date 11/21/96]
11/4/96	25	Plea Agreement as to Carol A. Nichols , filed. (efs) [Entry date 11/21/96]

11/4/96	26	Judge William G. Young . CLERK'S NOTES as to Carol A. Nichols , re: change of plea/sentencing Dft. Sworn. Court conducts plea colloquy with the dft. After hrg the Court accepts plea of guilty to count 1. Sentencing hrg held. Court announces guideline calculations. Court departs downward per the plea agreement. After hrg the Court imposes the following sentence: The dft is sentenced to 4 months prbation to be served in home confinement with the following special conditions. The dft may leave the home to go to work,attned religious services, sttend to medical needs and shop for necessities. The dft may communicate with Simon Fireman through written communication only with copies of the correspondence to go to Probation. ; (efs) [Entry date 11/21/96] [Edit date 11/21/96]
11/4/96	--	Sentencing held Carol A. Nichols (2) count(s) 1 . (efs) [Entry date 11/21/96]
11/6/96	27	Judge William G. Young . JUDGMENT entered Carol A. Nichols (2) count(s) 1. The dft is sentenced to 4 month Probation with home confinement on electronic monitor to be paid for by the dft. While on home confinement the dft may leave the home to go to work, attend religious services, attend to medical needs and shop for necessities. The dft may have no verbal communication with co-dft Fireman, but may communicate through written correspondence. Copiues of all such correspondence must be given to Probation. (efs) [Entry date 11/21/96]
11/8/96	24	Satisfaction of judgment by USA as to Simon C. Fireman (dms) [Entry date 11/13/96]
11/21/96	--	**JS3 Closing Card for Carol A. Nichols Terminated Defendant Carol A. Nichols (efs) [Entry date 11/21/96]

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