FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4502

DATE FILMED 5-18-87 CAMERA NO. 4

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ORIGINAL

BEFORE THE FEDERAL ELECTION COMMISSION
OF THE UNITED STATES OF AMERICA

In the matter of:	)	
	)	
Democratic Senatorial Campaign Committee and	)	Matter Under Review 4502
Paul Johnson, as treasurer	)	
Docking For U.S. Senate and	)	
William Docking, as treasurer	)	

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COMMISSION
OFFICE OF GENERAL
COUNSEL

COMPLAINT

The Democratic Senatorial Campaign Committee ("DSCC") and Docking For U.S. Senate are conspiring to raise illegal and excessive earmarked contributions to fund her race for the open United States Senate seat in Kansas. As numerous documents demonstrate, the DSCC and Docking For U.S. Senate have used the tally program as a vehicle to circumvent federal election laws governing earmarked and excessive contributions. This renewal of the same "tally program" the Federal Election Commission ("Commission") has already ruled violates the Federal Election Campaign Act ("Act") constitutes a knowing and willful violation of the Act.

Accordingly, the Commission must immediately review this complaint and institute the appropriate investigation and enforcement action to stop, once and for all, these illegal funds from being used in the U.S. Senate election in Kansas. At a minimum, the FEC must subpoena and examine the tally sheets and other documents prepared for Jill Docking and each of the other Democratic Senate candidate as part of the tally program. *See e.g.* Exhibits 6-26. In addition, the FEC should contact and investigate all contributors who donated the maximum to a Docking For U.S. Senate and then contributed to the DSCC to determine if that donor was told or believed his or her contribution would benefit Docking.

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Accordingly, pursuant to 2 U.S.C. § 437g(a)(1), the National Republican Senatorial Committee ("NRSC") submits the following complaint against the DSCC and Docking For U.S. Senate.

INTRODUCTION

This complaint is based on internal documents of the DSCC and its Democratic Senate candidates which demonstrate that the DSCC's tally program never was, and is not now, an informal fundraising program. Rather, the documents show that the tally program in this and prior election cycles is a systematic scheme to raise illegal earmarked and excessive contributions from donors who have already given the legal maximum to a candidate and then funnel their excessive contributions into coordinated expenditures spent by the DSCC for that same candidate. As such, this scheme violates the Act.

Rather than complying with the Act, the DSCC has chosen instead to evade it by implementing purely cosmetic measures to create the appearance of compliance. The evidence set forth below demonstrates that, beneath this superficial veneer, the DSCC is in this election cycle using the tally program in the same manner it admitted in MUR 3620 is illegal; namely, as an elaborate scheme to circumvent federal contribution limitations by soliciting illegal earmarked contributions disguised as legitimate contributions to the DSCC, and then funneling such funds to the "tallied" candidate in the form of coordinated expenditures.

The DSCC is not alone in this elaborate tally scheme to evade federal contribution limitations. Joining the DSCC as accomplices in violation of the Act are each Democratic Senate candidate whose campaign has knowingly recruited funds for the DSCC's tally program

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and will receive DSCC coordinated expenditures during the 1995-96 cycle, including Docking For U.S. Senate.

Given the scope of the violations of the Act committed through the DSCC tally program and the potentially irreparable damage to the fairness and integrity of the 1996 elections for the United States Senate, the Commission must institute an immediate investigation and enforcement action with regard to such violations.

FACTS

The legality of the DSCC tally program first came into question when a complaint was filed with the Commission on September 24, 1992 charging the DSCC and several Democratic Senate candidates with "engaging in a common scheme or design to circumvent and violate federal election laws when it comes to raising campaign contributions." NRSC Complaint, attached as Exhibit 1.

This "common scheme" was the DSCC's "tally" program, a fundraising mechanism under which contributors to the DSCC can "tally" their contribution to a specific candidate or group of candidates so that the DSCC will use those funds for its coordinated expenditures on behalf of these candidates. To raise funds for this program, the DSCC and its candidates produced and distributed written and oral solicitations requesting that contributions be sent to the DSCC and informing potential contributors of the tally option.

Although the DSCC argued that this tally system was merely an "informal accounting process established by the DSCC to keep track of the amount of money raised for the Committee's use by a particular candidate" (DSCC Response, attached as Exhibit 2), the

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Commission rejected that argument. The Commission's ruling was based on substantial evidence that the tally program was an elaborate scheme to evade federal contribution limitations by knowingly soliciting and collecting contributions "earmarked" for specific candidates, and then funneling such funds back to the specific candidates in the form of coordinated expenditures. *See* Exhibit 1. The DSCC admitted that the total amount of money "tallied" by a particular candidate was "taken into consideration as one of several factors used by the DSCC" in determining the level of coordinated expenditures made on behalf of such candidate. DSCC Response, attached as Exhibit 2.

Based on the evidence presented by the NRSC and the Commission's own investigation, the Commission found on October 4, 1994 that it had "reason to believe" that the DSCC had violated the federal election laws and regulations governing earmarked contributions, including 2 U.S.C. § 441a(a)(8), 11 C.F.R. § 110.6(c)(1), 11 C.F.R. § 110.6(b)(2)(iii), and 11 C.F.R. § 102.8. *See* FEC Certification, Exhibit 3. Shortly thereafter, the Commission initiated an informal conciliation process with the DSCC regarding MUR 3620.

The Conciliation Agreement:

This process resulted in a Conciliation Agreement signed by the DSCC on August 11, 1995 and the Commission on August 21, 1995. *See* Conciliation Agreement, Exhibit 4. In this Conciliation Agreement:

- The DSCC voluntarily and expressly agreed that its tally program operations in the 1991-92 and 1993-94 election cycles were soliciting and generating illegal earmarked

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contributions that were then given to Democratic Senate candidates as coordinated expenditures.

- The DSCC agreed to pay a civil penalty of $75,000 for violating the Act, the largest fine to date against any political party committee.
- The DSCC also voluntarily and expressly agreed to radically alter its tally program and corresponding solicitations by implementing a series of remedial measures designed to ensure that illegal earmarking activities would not reoccur in 1995-96 and future election cycles. Specifically, the DSCC agreed it would:

1. not accept any earmarked contributions in the future and would refund any such contribution to the donor or forward it directly to the designated candidate so it would count against the donor's limits to that candidate;
2. provide on-going education and training to DSCC staff and all other tally participants regarding the prohibition against earmarked contributions;
3. utilize standard language in all tally program solicitations informing potential contributors that the DSCC does not accept earmarked contributions and that all tallied contributions would be distributed as the DSCC determines within its sole discretion; and
4. implement procedures to review all tally program solicitations to make sure that they do not solicit earmarked contributions.

- The DSCC and the Commission agreed that the DSCC would be taken directly to court for any similar illegal tally activities in the future or any other failure to comply with the terms of the Conciliation Agreement.

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Simply stated, the DSCC promised the Commission it would discontinue its illegal tally program activities or else be taken to court. However, as this Complaint and the attachments demonstrate, the DSCC and its Democratic Senate candidates are continuing the exact tally activities the DSCC promised would cease. In reality, the DSCC has made only cosmetic changes to its tally program in the form of over-lawyered "disclaimer language" intended to give the appearance of compliance. *See, e.g.*, Solicitation for DSCC's 1996 "Take Back the Senate Dinner," Exhibit 5.[1] Despite its legalese, the DSCC and its candidates have continued to act together to knowingly and willfully use the tally program in the 1995-96 election cycle as they have in the past; namely, as an elaborate scheme to avoid federal contribution limitations by soliciting and collecting contributions illegally earmarked for a specific candidate and then funneling such funds back to Democratic Senate candidates under the guise of coordinated expenditures.

How the Tally Program Works:

The DSCC's use of its tally program to evade federal election law contribution limits is being carried out in conjunction with all its Democratic Senate candidates. Illustrative are the DSCC's 1995-96 tally activities with Senator Carl Levin from Michigan and his campaign committee (the "Friends of Senator Carl Levin"). Here's how it works.

First, the DSCC actively coordinates with Senator Levin in the preparation and distribution of oral and written solicitations for the tally program. As the documents attached to

[1] Obscured in the back of the fundraising solicitation for this "Take Back the Senate Dinner," the DSCC includes language stating that it "does not accept contributions earmarked for a particular candidate" and that tallied contributions will be spent as the DSCC determines "within its sole discretion." *See* Exhibit 5. No such language appears on the contribution card accompanying the solicitation. *Id.* Furthermore, as shown herein, the actions of the DSCC and its candidates belie its own language and the requirements of the Act.

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this Complaint demonstrate, these solicitations represent thinly veiled attempts to obtain illegal earmarked contributions from certain targeted donors, especially those individuals who have already given the legal maximum in direct contributions to the Levin campaign:

1. In an October 9, 1995 letter attached as Exhibit 6 regarding a DSCC fundraising dinner, Senator Levin tells the Chrysler Corporation Nonpartisan PAC that their "support of the DSCC is very important to me" and stresses that "[i]t would be a tremendous help to me if you would buy a ticket or table and credit your contribution to me." (emphasis added). Levin also states that this "fundraising event is crucial to my reelection effort next year." This direct soliciting of an earmarked contribution in violation of the Act and the Conciliation Agreement is not negated by weak disclaimer language that the "amount of money to be spent by the DSCC on my behalf is based in part on my tally, among other factors. . ."
2. In the December 29, 1995 solicitation letter to the National Structured Settlements PAC attached as Exhibit 7, Senator Levin describes in detail his Senate race, the "spending capabilities" of his opponents, and his campaign's need for additional funds to compete in this "tremendously expensive race." Following this description of his own campaign's need for money, Levin goes on to state that he is "hoping you will be able to help me in a very specific way: would you be able to tally all or part of your 1996 DSCC contribution to me?" (emphasis added). Again, this clear request for an earmarked contribution cannot be negated by the weak disclaimer language in the letter.
3. In the April 17, 1995 "call sheets" attached as Exhibit 8, the DSCC encourages Senator Levin to orally solicit contributions to the DSCC for his tally from the United

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Steelworkers of America, the National Association of Letter Carriers, the Maintenance of Way Employees, the International Association of Fire Fighters, the Kellogg Better Government Committee, the International Ladies Garment Workers Union, the Service Employees International Union, the American Federation of State, County & Municipal Employees, the United Rubber Workers, Comerica Incorporated PAC, and Mr. and Mrs. Jerome Zimmerman.[2] Many of these call sheets suggest that the purpose of the calls was to solicit earmarked contributions for Levin, such as: (a) "the monies may be tallied to your campaign"; (b) "Please ask them to join the DSCC Roundtable by making a $5,000 contribution and tallying to you"; and (c) "she maxed to your last campaign" and her husband "has given to you as well", so "[a]sk them to attend the DSCC reception . . . and tally $5,000 to your campaign."

After such written and oral solicitations are made, the next step is for the contributors to respond with contributions to the DSCC earmarked for Senator Levin's campaign, as demonstrated by the following documents:

1. In the June 21, 1996 letter attached at Exhibit 9, a contributor informs Senator Levin that he is "a participant in the DSCC Majority Trust Program and perhaps could be of some help via that mechanism." The contributor goes on to state that "a Majority Trust 'tally' to the Levin Campaign in the amount of $1,500 has been made."
2. In the August 5, 1996 letter attached at Exhibit 10, the same contributor again writes to Senator Levin to reiterate that "a DSCC 'tally' in the amount of $1,500 was made to your campaign" and to wish Senator Levin "every success" in his campaign.

2/ These call sheets are dated before the signing of the Conciliation Agreement in August of 1995, but they apparently were never turned over to the Commission as part of MUR 3620.

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3. In the June 25, 1996 letter attached at Exhibit 11, another contributor earmarks $2,000 to the Levin campaign.

4. In the April 4, 1996 letter attached at Exhibit 12, a representative of the National Committee to Preserve Social Security and Medicare instructs the DSCC to add a $2,000 contribution "to Senator Carl Levin's Tally Sheet."

The DSCC keeps a specific, detailed accounting of all such earmarked contributions and periodically provides Senator Levin with a "Tally Report" listing the names of all contributors to his tally as well as the dates and amounts of the contributions. Three such Tally Reports sent to Senator Levin in January, March and June of 1996 are attached at Exhibit 13. These Tally Reports show that the DSCC and the Levin campaign have violated the Act by accepting contributions earmarked for Senator Levin from a wide range of individuals and political action committees during the 1995-96 election cycle,[3/] including:

1. A $5,000 contribution on March 14, 1996 from Chrysler Corporation's political action committee, which appears to be the same organization that Senator Levin solicited in the previously discussed October 9, 1995 letter attached at Exhibit 6.

2. A $4,500 contribution on October 25, 1995 and another $2,500 on March 31, 1996 from the American Federation of State, County and Municipal Employees PAC, the same organization that was targeted in one of Senator Levin's solicitation "call sheets" attached at Exhibit 8.

3/ Given that the most recent of the attached Tally Reports is dated June 6, 1996, it is certain that the DSCC has subsequently received additional contributions earmarked for Senator Levin from other individuals and PACs. For example, the letters attached at Exhibits 9 and 10 indicate that the contributor provided the DSCC with a contribution earmarked for Senator Levin on June 20, 1996. The discovery process can identify other contributors who have provided similar earmarked contributions since June 6, 1996.

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3. A $2,000 contribution on February 29, 1996 from the National Committee to Preserve Social Security and Medicare PAC. This same organization wrote to Senator Levin on April 4, 1996 informing him of this earmarked contribution. *See* Exhibit 12.
4. A $4,000 contribution on March 15, 1995. As indicated in the June 25, 1996 letter attached at Exhibit 11, the contributor has also earmarked an additional $2,000 to the Levin campaign.

Consistent with the tally program's purpose of circumventing federal contribution limitations, reports on file with the Commission show that many of the contributors listed in Senator Levin's Tally Reports provided their earmarked contribution after, or at about the same time, they gave the maximum direct contribution to the Friends of Senator Carl Levin Committee. These contributors include the American Federation of State, County and Municipal Employees, the United Auto Workers, Maryanne Hanson Alix, Madeleine Berman, Mandell Berman, Maurice Cohen, Sadie Cohn, Linda Dresner, Dorothy Gerson, Irwin Green, Doreen Hermelin, Robert Larson, David Mondry, Miriam Mondry, Richard Rogel, Susan Rogel, Joel Tauber and Timothy Wuliger.[4] *See* Exhibit 13.

According to the DSCC's Reports of Receipts and Disbursements on file with the Commission, the DSCC has not refunded or forwarded any of the earmarked contributions of these or any of the contributors listed in Senator Levin's Tally Reports, as required by the Act and the Conciliation Agreement.

Once these earmarked contributions are collected and tallied to Senator Levin, the final step is for the DSCC to funnel these funds back to the Levin campaign in the form of coordinated

[4] It is expected that this list of names will grow when the DSCC files its next report with the Commission.

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expenditures. The "Tally Reports" sent by the DSCC to Senator Levin in January, March and June of 1996 demonstrate this *quid pro quo*. *See* Exhibit 13. In these reports, Senator Levin is given a detailed, side-by-side accounting of: (1) the total amount of coordinated expenditures allowed to be allocated to Levin's campaign; (2) the total tally amount raised by Levin to date; and (3) the total amount spent by the DSCC on Levin's campaign to date. According to the June 6th Tally Report, the amount of coordinated expenditures available for Levin's race in Michigan at the time was $886,690, the total that Levin had raised in earmarked tally contributions was $542,000, and the total amount he had received was $17,500.

Collectively, these various steps within the DSCC's tally program comprise a willful and knowing circumvention of federal contribution limitations by soliciting earmarked contributions from donors who have already made the maximum direct contribution to specific Democratic Senate candidates. The knowing and willful nature of the illegal tally activities conducted by the DSCC and the Levin campaign is evidenced by the following series of documents relating to a contributor named Robert Nathan:

1. First, an invitation to a September 16, 1996 fundraiser for Senator Levin in Beverly Hills was circulated to Mr. Nathan. *See* Levin Fundraiser Invitation, attached as Exhibit 14. According to reports on file with the Commission, this donor had previously given the maximum direct contribution to Senator Levin's campaign.
2. Matthew Erickson, the Levin campaign's Deputy National Fundraiser, then contacted Mr. Nathan by fax to solicit an earmarked tally contribution from him for the September 16th event which was clearly to be held for the benefit of the Friends of Senator Carl Levin. *See* Levin Fax, attached as Exhibit 15. As part of the blatant attempt to cover up the true

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nature of the illegal earmarked contribution of this donor, the cover sheet of the fax specifically instructs the donor that "it is very important that you not put Senator Levin's name on the check itself. The letter alone is sufficient to insure that the contribution is tallied to Senator Levin." *Id.* (emphasis added). The fax cover sheet also thanks the donor for his "help" and states "[w]e'll see you on the 16th." *Id.* Attached to this cover sheet are two additional documents intended to disguise the earmarked nature of the contribution: a letter to the donor containing the standard disclaimer language and a prepared letter for the contributor to sign stating that "I understand the tally system as it has been explained to me." *Id.*

3. Finally, in the internal guest list for the September 16th event attached as Exhibit 16, it is documented that Mr. Nathan will attend and that he is "at personal max -- bringing DSCC tally."

This series of documents demonstrates clearly the calculated efforts of the DSCC and the Levin campaign to give tally contributors step-by-step instructions on how to cover-up their illegal earmarked contributions in order to create the appearance of compliance with the Act.

Senator Levin's situation illustrates how the DSCC tally program is being used to knowingly and willfully violate the Act. However, the Levin campaign is not alone. Overwhelming evidence shows the DSCC using the same tally scheme they admitted in MUR 3620 is illegal to benefit all of the Democratic Senate candidates during the 1995-96 election cycle:

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1. In the memo attached at Exhibit 17 regarding the "1995 DSCC Annual Senate Dinner," the DSCC informs recipients that "[c]ontributions to the 1995 Fall dinner may be tallied to any Democratic U.S. Senator or any 1996 nominee for the U.S. Senate."
2. Reports on file with the Commission show that the DSCC has accepted at least $70,000 in earmarked and excessive contributions from several family members of South Carolina Democratic Senate candidate Elliott Close. Just days after receiving this $70,000 in earmarked and excessive funds, the DSCC made coordinated expenditures of $74,461 on behalf of the Close campaign for television ads from a number of South Carolina television stations. *See* Summary of Television Purchases, attached as Exhibit 18.[5]
3. In August 30, 1996 *Associated Press* report attached at Exhibit 19, Illinois Democratic Senate Candidate Dick Durbin is quoted as stating that "[t]he only way the Democratic Senatorial Campaign Committee money goes to me is if I raise the money and it is tallied to me." (emphasis added).
4. When Texas Democratic Senate candidate Victor Morales was asked during a September 25, 1996 interview how much money his campaign has "ready to spend", he responded: "I think we have a little over $200 -- maybe $300,000. And then there's some tally money of about $150,000. Tally money that, you know, people have tallied in my name to the DSCC." (emphasis added). Morales Interview Transcript, attached as Exhibit 20.

[5] Exhibit 18 is a summary of the DSCC's purchases of ads for the Close campaign at various South Carolina television stations. This summary was prepared based on the personal review of the books of the various stations by three volunteers of the Re-Elect Thurmond Committee who were prohibited by the stations from making photocopies. Sworn affidavits from these three aides testifying to the veracity of the summarized information will be forwarded to the Commission shortly.

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5. In the January 10, 1996 *Rocky Mountain News* article attached at Exhibit 21, the reporter describes a letter sent by DSCC Chairman Senator Bob Kerrey of Nebraska to all five Democratic Senate candidates in Colorado. In this letter, Kerrey asks the candidate to help raise $10,000 for a DSCC Majority Trust event in Aspen and "reminds the candidate and his donors that the money raised for the DSCC can be earmarked right back to the candidate" if he or she wins the primary. [emphasis added].

6. In the August 7, 1996 letter attached as Exhibit 22, DSCC Chairman Bob Kerrey writes to Virginia Democratic Senate candidate Mark Warner asking him to participate in the "Annual Senate Issues Conference and Dinner" on September 26, 1996. Kerry also: (a) informs Warner that "you have raised $97,250.00 against your overall tally of $636,442.00," which, significantly, is the exact amount of coordinated expenditures permitted in Virginia; (b) stresses that the event "will provide a terrific opportunity" for Warner "to raise significant tally money"; and (c) states that "this dinner will give you a chance to meet our major donors from across the country who will in turn be supportive of your campaign's fundraising efforts."

7. In the January 31, 1996 letter attached as Exhibit 23, the Transportation Political Education League, the political committee of the United Transportation Union ("UTU"), instructs the DSCC to tally a $14,250 contribution to Senator Paul Wellstone. This letter seems to have been generated at the request of the Wellstone For Senate committee based on a fax sent to the UTU stating "that without something from the UTU the DSCC will hold-up crediting your check to Paul." Wellstone For Senate Fax, attached as Exhibit 24,

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Moreover, reports on file with the Commission show that the UTU had already given the maximum direct contribution of $10,000 to Wellstone For Senate

8. In the February 3, 1995 letter attached as Exhibit 25, Senator Wellstone thanks a contributor for his "willingness to consider supporting my re-election efforts" and then describes his campaign's need for money due to his status as the Republican's "top target for the 1996 elections."[6] Wellstone then states that he is "starting from scratch with the DSCC, so anything you can tally would be a tremendous help. Your early support means a great deal to me." *Id.* (emphasis added). This clear solicitation of an earmarked contribution does not contain any of disclaimer language.

9. In the March 28, 1995 "call sheets" attached as Exhibit 26, the DSCC encourages Senator Wellstone to orally solicit contributions to the DSCC for his tally from the American Federation of State, County & Municipal Employees, the Human Rights Campaign Fund, and the Service Employees International Union.[7]

The bottom line is that the DSCC has not altered the tally program in any substantive manner during the 1995-96 cycle to comply with the requirements of the Act. All the DSCC has done is incorporate cosmetic "disclaimer" language into some of its tally solicitations. But actions speak louder than words; the DSCC and its Democratic Senate candidates continue to conspire to use the tally program in the same manner as in prior election cycles to circumvent federal contribution limitations by soliciting and accepting illegal earmarked contributions

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6/ This letter is dated before the signing of the Conciliation Agreement in MUR 3620, but was never turned over to the Commission.

7/ These call sheets are dated before the signing of the Conciliation Agreement in MUR 3620, but were never turned over to the Commission.

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disguised as legitimate contributions to the DSCC, and then funneling these funds to the "tallied" candidate in the form of coordinated expenditures.

Docking For U.S. Senate has violated the federal election laws governing earmarked contributions by knowingly participating in this tally program and soliciting funds for her DSCC "tally." Docking is about to violate the federal election laws governing excessive and illegally earmarked contributions by receiving DSCC tally funds during the 1995-96 cycle in the form of coordinated expenditures.

Moreover, each contributor who donated the maximum to Docking For U.S. Senate and then contributed to the DSCC tally program may be guilty of violating the Act if it is determined after an investigation by the Commission that the contributor knowingly participated in the scheme to circumvent the Act.

LAW

I. Conciliation Agreement in MUR 3620

Pursuant to the Conciliation Agreement regarding MUR 3620 signed by the DSCC on August 11, 1995 and the Commission on August 21, 1995, the parties expressly and voluntarily agreed to the following:

1. The "DSCC and certain of its candidates prepared and distributed fundraising solicitations for the DSCC's tally program which can be fairly and reasonably read to mean that contributions would be earmarked for a particular candidate." Section V(1).
2. In response to the DSCC tally solicitations, "some contributors earmarked their contributions to the DSCC for a particular candidate." *Id.*

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3. The DSCC did not treat such earmarked contributions "as being earmarked for the designated candidate" in violation of 2 U.S.C. § 441a(a)(8), 11 C.F.R. § 102.8, 11 C.F.R. § 110.6(b)(2)(iii) and 11 C.F.R. § 110.6(c)(1). Section V(2).
4. "Some of the funds received by the candidate committees as coordinated party expenditures from the DSCC were earmarked contributions which the DSCC . . . failed to report as earmarked contributions" in violation of 11 C.F.R. § 110.6(b)(2)(iii). *Id.*
5. The solicitations used in the DSCC tally program "could have been clarified to avoid soliciting earmarked contributions." Section V(3).
6. The DSCC will pay a $75,000 civil penalty to the Commission for violating the Act. Section VI(1).
7. The DSCC will implement remedial measures to ensure that any contributions received by the DSCC in the future through its tally program that "appear to be earmarked" will be refunded to the contributor or forwarded to the designated candidate in accordance with the requirements of the Act. Section VI(2)(a).
8. The DSCC will provide on-going "education and training to DSCC staff and participants in the tally program, including the staff of Democratic Senate candidates, which will emphasize that: (1) DSCC does not accept contributions earmarked for a particular candidate; (2) tallied contributions will be spent for DSCC activities and programs as the Committee determines within its sole discretion; and (3) contributors must be advised of (1) and (2) above when the DSCC and the tally program participants solicit tallied contributions." Section VI(2)(b).

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9. The DSCC will "utilize standard language" in its future solicitations pertaining to the tally program which states, at a minimum, "that the DSCC does not accept contributions earmarked for a particular candidate and that tallied contributions will be used as the DSCC determines in its sole discretion." The DSCC also agreed to instruct all of the candidates and committees that participate in the tally program to include this standard language in any tally solicitations that they distribute. Section VI(2)(c).

10. The DSCC "will implement reasonable procedures to review DSCC and Democratic Senate candidate fundraising solicitations pertaining to the tally program to ensure that the solicitations cannot be reasonably read to solicit earmarked contributions." Section VI(2)(d).

11. The Commission, on the request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) or on its own motion, may review compliance with the Conciliation Agreement. Section VII. If the Commission determines that any provision of the Conciliation Agreement has been violated, the Commission "may institute a civil action for relief in the United States District Court for the District of Columbia." *Id.*

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II. Earmarked Contributions

Under 2 U.S.C. § 441a(a)(8), a contribution made by a person, either directly or indirectly, on behalf of a particular candidate, which is in any way earmarked or otherwise directed through an intermediary or conduit, shall be treated as a contribution from such person to such candidate. The term "earmarked" is defined at 11 C.F.R. § 110.6(b)(1) as a designation, instruction or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or part of a contribution or expenditure being made to, or expended on behalf of, a

clearly identified candidate or a candidate's authorized committee. The term "conduit or intermediary" is defined at 11 C.F.R. § 110.6(b)(2) as any person who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee.

Under 11 C.F.R. § 110.6(b)(2)(iii), any person who receives an earmarked contribution is required to forward such earmarked contribution to the candidate or the candidate's authorized committee in accordance with 11 C.F.R. § 102.8, which provides that earmarked contributions must be forward no later than 10 days after receipt.

Pursuant to 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c)(1), the intermediary or conduit of an earmarked contribution must report the source of the contribution and the intended recipient to the Commission and to the intended recipient. Recipient candidates or candidate committees are in turn required by 11 C.F.R. § 110.6(c)(2) to report earmarked contributions and each conduit or intermediary who forwards one or more earmarked contributions which in the aggregate exceed $200 in any calendar year.

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III. Excessive Contributions

Under 2 U.S.C. § 441a(a)(1)(A), no person shall make contributions to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. The term "person" includes an individual, partnership, committee, association, corporation, labor organization or any other organization or group of persons. 2 U.S.C. § 431(11). All contributions by a person to a candidate, "including contributions which are in any way earmarked or otherwise directed to the candidate through an intermediary or conduit," are contributions from the person to the candidate. 11 C.F.R. § 110.6(a).

Under 2 U.S.C. § 441a(a)(2)(A), no multi-candidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $5,000.

Under 2 U.S.C. § 441a(f), no candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the limitations set forth in section 441a of the Act. Furthermore, no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under section 441a of the Act.

DISCUSSION

I. THE DSCC AND ITS DEMOCRATIC SENATE CANDIDATES HAVE USED THE 1995-96 TALLY PROGRAM TO KNOWINGLY AND WILLFULLY VIOLATE FEDERAL ELECTION LAWS GOVERNING EARMARKED CONTRIBUTIONS.

As their own documents and actions show, the DSCC and its Democratic Senate candidates have not stopped the tally program and the techniques the DSCC admitted are unlawful and promised to cease in MUR 3620. The only change has been in the program's packaging, not its operation. As demonstrated by the attached documents such as Exhibits 14 through 16, despite the "disclaimer" language the DSCC and its candidates have been using to cover up their illegal actions, they are continuing to solicit and accept earmarked contributions through its tally program during the 1995-96 election cycle in violation of the federal election laws governing earmarked contributions. In fact, the DSCC and its candidates have violated the Act by doing precisely what its "disclaimer" language says it will not do.

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The DSCC has violated the Act and regulations by actively coordinating with the campaigns of its 1995-96 Democratic Senate candidates to prepare and distribute tally program solicitations clearly intended to solicit earmarked contributions from certain targeted donors. These solicitations are intended to generate earmarked contributions because they are asking the contributor to place a "designation, instruction or encumbrance" on their contribution "which results in all or part of" such contribution "being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee." 11 C.F.R. § 110.6(b)(1).

To illustrate, consider the tally solicitation letters sent by Senator Levin to contributors on October 9, 1995 and December 29, 1995. In the October 9th letter, Levin stresses to Chrysler's PAC that a tallied contribution "is crucial to my reelection effort next year." Exhibit 6. Likewise, in the December 29th letter, Levin follows a detailed description of his campaign's need for money by stating that he hopes the National Structured Settlements PAC "will be able to help me in a very specific way: would you be able to tally all or part of your 1996 DSCC contribution to me?" Exhibit 7. Without question, these solicit an earmarked contribution for Senator Levin's campaign. The weak disclaimer language in these letters is irrelevant given that it does not in any way suggest that the contributor cannot earmark a contribution or that the DSCC exercises discretion over tallied funds.

Besides these written solicitations, the Levin "call sheets" demonstrate that the DSCC also encourages its tally participants to solicit aggressively earmarked contributions over the phone from major interest groups such as the United Steelworkers, the American Federation of State, County & Municipal Employees and the Kellogg Better Government Committee. *See* Exhibit 8. The instructions given to Senator Levin on these call sheets make it clear that the

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purpose of the calls was to solicit earmarked contributions. For example, Levin was informed on one call sheet that a contributor has "maxed out to your last campaign" and her husband has given to you as well", so "[a]sk them to. . .tally $5,000 to your campaign." *Id.* Nothing in this or any of the other call sheets instructs or even suggests to Senator Levin that the donors called must be informed of the prohibition against earmarked contributions.

Senator Levin has not been alone in soliciting earmarked contributions for the DSCC tally program. Substantial evidence shows that all of the Democratic Senate candidates have been soliciting earmarked contributions as part of the tally program during the 1995-96 election cycle. To illustrate, the Wellstone For Senate campaign sent a January 31, 1996 fax to the United Transportation Union, an organization that had already donated the maximum amount to Wellstone's campaign . *See* Exhibit 24. In this fax, the Wellstone For Senate campaign specifically requests the UTU to earmark its substantial $14,250 contribution to Wellstone by stating "that without something from the UTU the DSCC will hold-up crediting your check to Paul." *Id.* Moreover, in the February 3, 1995 letter attached as Exhibit 25, Senator Wellstone follows a description of his campaign's need for money by telling the contributor that "anything you can tally would be a tremendous help" and "[y]our early support means a great deal to me." This clear solicitation of an earmarked contribution does not contain any disclaimer language whatsoever.

Because tally solicitations such as those described above ask for earmarked contributions, many of the contributors who have responded to these solicitations during the current cycle have earmarked their contributions to the DSCC on behalf of a particular candidate. An example is the June 21, 1996 letter sent to Senator Levin from a tally contributor. *See* Exhibit 9. In this

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letter, the contributor informs Levin that he donated $1,500 "via" the DSCC tally "mechanism" so he "could be of some help" to Levin's campaign. *Id.* This same contributor even sent a second letter to Levin describing the $1,500 contribution and wishing Levin "every success" in his campaign. Exhibit 10. The Tally Reports given to Senator Levin by the DSCC show that this contributor is not alone. *See* Exhibit 13. As of June 6, 1996, over 100 other contributors had earmarked contributions to Senator Levin through the DSCC's tally program, including Chrysler's PAC, the American Federation of State, County and Municipal Employees and others the documents show had received specific written or oral solicitations from Levin. *Id.*

By virtue of accepting these earmarked contributions, the DSCC meets 11 C.F.R. § 110.6(b)(2)'s definition of a "conduit or intermediary." As such, the DSCC is required by:

- 2 U.S.C. § 441a(a)(8) to treat all the earmarked contributions it receives through the tally program as direct contributions to the tallied candidate;
- 11 C.F.R. § 110.6(b)(2)(iii) to forward all the earmarked contributions received through the tally program to the tallied candidate or authorized committee within the 10 day limit established by 11 C.F.R. § 102.8; and
- 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c)(1) to report the source of the contribution and the intended recipient to the Commission.

However, the DSCC's own reports on file with the Commission show that the DSCC has knowingly and willfully failed to: (1) treat any of the earmarked contributions received through the tally program as direct contributions to the tallied candidate in violation of 2 U.S.C. § 441a(a)(8); (2) forward any of the earmarked contributions to the tallied candidate or his/her authorized committee in violation of 11 C.F.R. §§ 110.6(b)(2)(iii) and 102.8; and (3) report the

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source of the earmarked contribution and the intended recipient to the Commission in violation 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c)(1).

Rather than complying with these requirements, the DSCC has instead knowingly and willfully continued to accept earmarked contributions through the tally program with the intent of funneling them back to the designated candidate at a later date in the form of coordinated expenditures. Docking For U.S. Senate and the other Democratic Senate candidates are equally culpable because they are knowingly and willfully participating in the illegal tally scheme, yet reports on file with the Commission show that none of the candidates has reported the receipt of any earmarked contributions in violation of 11 C.F.R. § 110.6(c)(2).

As if this were not enough to prove that the DSCC and its candidates have knowingly and willfully conspired to violate the federal election laws governing earmarked contributions during the 1995-95 election cycle, there can be no doubt after:

- The series of documents attached as Exhibits 14 through 16 showing how the DSCC and the Levin campaign provided step-by-step instructions to a maxed out donor on how to disguise his earmarked contribution by means of a paper trail and clever disclaimer language. The contributor was told "it is very important that you not put Senator Levin's name on the check itself" and was even provided with a prepared letter stating that he understands "the tally system as it has been explained." Levin Fax, attached as Exhibit 15;
- DSCC Chairman Bob Kerrey's statement to Democratic Senate candidates in Colorado that "the money raised for the DSCC can be earmarked right back to the candidate" if he or she wins the primary. *Rocky Mountain News* Article, attached as Exhibit 21;

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- Illinois Democratic Senate candidate Dick Durbin's confession that "the only way the Democratic Senatorial Campaign Committee money goes to me is if I raise the money and it is tallied to me." *Associated Press Report*, attached as Exhibit 19;
- Texas Democratic Senate candidate Victor Morales' statement during an interview that his campaign is going to receive "tally money of about $150,000. . .that, you know, people have tallied in my name to the DSCC." *See* Morales Interview Transcript, attached as Exhibit 20; and
- The DSCC's purchase of $74,461 worth of television ads on behalf of South Carolina Democratic Senate candidate Elliott Close's campaign shortly after receiving $70,000 in earmarked tally contributions from several of Close's relatives. *See* Summary of Television Purchases, attached as Exhibit 18.

Thus, by the admission of its Chairman and two of its candidates, the entire tally program is an elaborate scheme between the DSCC and its candidates to circumvent federal laws and regulations concerning earmarked contributions. The truth of such admissions is confirmed by the DSCC "Tally Reports," which provide each Democratic Senate candidate with a detailed, side-by-side accounting of: (1) the total amount of coordinated expenditures allowed to be allocated to the candidate's campaign; (2) the total tally amount raised by the candidate to date; and (3) the total amount spent by the DSCC on the candidate's campaign to date. *See, e.g.*, Levin Tally Reports, Exhibit 13.

Each contributor who earmarked funds to Docking For U.S. Senate through the DSCC tally program may also be guilty of violating the Act if it is determined after an investigation by the Commission that the contributor knowingly participated in the earmarking scheme.

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II. THE DSCC AND ITS DEMOCRATIC SENATE CANDIDATES HAVE USED THE 1995-96 TALLY PROGRAM TO KNOWINGLY AND WILLFULLY VIOLATE FEDERAL ELECTION LAWS GOVERNING EXCESSIVE CONTRIBUTIONS.

The tally program operated by the DSCC and its candidates is not designed to generate earmarked contributions from just any random individuals or political action committees. Rather, the tally program is and has always been a deliberate and systematic scheme to evade the federal contribution limitations of 2 U.S.C §§ 441a(a)(1)(A) and (2)(A) by raising excessive contributions from targeted donors who have already given the legal maximum to a candidate and then funneling such excessive contributions back to the specific candidates under the guise of coordinated expenditures.

Senator Levin's Tally Reports attached as Exhibit 13 demonstrate how the DSCC and its candidates are using the tally program to circumvent federal contribution limitations. Reports on file with the Commission show that many of the individuals listed in Senator Levin's Tally Reports provided their earmarked contribution after, or at about the same time, they gave the maximum direct contribution of $2,000 to the Friends of Senator Carl Levin Committee. 2 U.S.C § 441a(a)(1)(A). Moreover, several of the political action committees listed in the Levin Tally Reports gave their earmarked contribution after, or at about the same time, they gave the maximum direct contribution of $10,000 to the Levin campaign. U.S.C § 441a(a)(2)(A). These contributors include Maryanne Hanson Alix, Madeleine Berman, Mandell Berman, Maurice Cohen, Sadie Cohn, Linda Dresner, Dorothy Gerson, Irwin Green, Doreen Hermelin, Robert Larson, David Mondry, Miriam Mondry, Richard Rogel, Susan Rogel, Joel Tauber, Timothy

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Wuliger, the American Federation of State, County & Municipal Employees, and the United Auto Workers .[8] *Id.*

The clear purpose of the tally program to solicit illegally earmarked and excessive contributions is also demonstrated by the series of documents attached as Exhibits 14 through 16. These documents show that the DSCC and its candidate Levin are not only targeting donors that have already given the maximum direct contribution to Senator Levin, but are also providing such donors with step-by-step instructions on how to create the appearance of compliance with the Act. For example, a donor was contacted with instructions to attend a September 16th fundraiser for Senator Levin and earmark a contribution to Senator Levin's campaign through the tally program, but "not put Senator Levin's name on the check itself." *See* Levin Fax, attached as Exhibit 15. (emphasis added). On the guest list for this event, there is a notation documenting that this donor was at his "personal max -- bringing DSCC tally." *See* Levin Fundraiser Guest List, attached as Exhibit 16.

Senator Levin is not the only campaign participating in this scheme as an accomplice to the DSCC. Rather, the DSCC has operated similar same tally activities in coordination with each of the Democratic Senate candidates for the 1995-96 election cycle for the same purpose of evading federal contribution limits. For example, on January 31, 1996, the DSCC received a $14,250 contribution earmarked for Senator Wellstone from the United Transportation Union, an organization which had previously donated the maximum $10,000 direct contribution to the Wellstone For Senate campaign. *See* Exhibit 23. Moreover, reports on file with the Commission show that the DSCC received $70,000 in contributions earmarked for South Carolina Democratic

[8] It is expected that this list of names and PACs will grow when the DSCC files its next report with the Commission.

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Senate candidate Elliott Close from several of Close's family members who had already given the maximum $2,000 in direct contributions to the Elliott S. Close For U.S. Senate committee.

Once such excessive contributions are collected, the DSCC and each of its candidates arrange to have such funds funneled back to the candidate in the form of coordinated expenditures. For example, logs from a number of South Carolina television stations show the DSCC purchased a total of $74,461 in television ads on behalf of Elliott Close's campaign shortly after receiving the $70,000 in earmarked contributions from Close's relatives. *See* Exhibit 18. The conspiracy of the DSCC and its candidates to circumvent federal contribution limits is also confirmed by the statements of DSCC Chairman Bob Kerrey, Illinois Democratic Senate candidate Dick Durbin and Texas Democratic candidate Victor Morales:

- In the January 10, 1996 *Rocky Mountain News* article attached at Exhibit 21, DSCC Chairman Bob Kerrey "reminds" Democratic Senate candidates "that the money raised for the DSCC can be earmarked right back to the candidate." (emphasis added).
- Dick Durbin is quoted in August 30, 1996 *Associated Press* report attached at Exhibit 19 as stating that "[t]he only way the Democratic Senatorial Campaign Committee money goes to me is if I raise the money and it is tallied to me." (emphasis added).
- When asked during a September 25, 1996 interview how much money his campaign had "ready to spend", Victor Morales responded that his campaign is going to receive "some tally money of about $150,000. . .that, you know, people have tallied in my name to the DSCC." Morales Interview Transcript, attached as Exhibit 20. (emphasis added).

Senator Levin's Tally Reports also demonstrate the *quid pro quo* of tally funds for excessive contributions disguised as coordinated expenditures. *See* Exhibit 13. In these reports,

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Senator Levin is given a detailed, side-by-side accounting of: (1) the total amount of coordinated expenditures allowed to be allocated to Levin's campaign; (2) the total tally amount raised by Levin to date; and (3) the total amount spent by the DSCC on Levin's campaign to date. *Id.* All of the other Democratic Senate candidates receive similar tally reports keeping them abreast of the amount of excessive contributions that will be funneled into their campaigns.[9]

Given that the DSCC's coordinated expenditures serve as a vehicle to knowingly funnel excessive contributions raised through the tally program to its candidates, the DSCC is guilty of violating 2 U.S.C. § 441a(f) for those coordinated expenditures that have already been made. Furthermore, the DSCC is about to violate 2 U.S.C. § 441a(f) further by making additional coordinated expenditures between now and the November election.

To the extent that Docking For U.S. Senate has knowingly raised and benefited from DSCC coordinated expenditures so far during the 1995-96 cycle, she is guilty of violating 2 U.S.C. § 441a(f)'s prohibition against the acceptance of excessive contributions. Moreover, each Democratic Senate candidate such as Jill Docking who is going to benefit from coordinated expenditures he or she helped "tally" to the DSCC is about to violate 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions.

Because the DSCC and Docking For U.S. Senate have conspired to operate the 1995-96 tally program in violation of the contribution limitations which serve as the fundamental tenant of federal election laws, the Commission must initiate enforcement actions against the DSCC and each of the current Democratic Senate candidates.

9/ Through the discovery process, the Commission must investigate the illegal tally activities of each of the Democratic Senate candidates during the 1995-96 cycle.

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Moreover, each contributor who donated the maximum to Docking For U.S. Senate and then contributed to the DSCC tally program may be guilty of violating 2 U.S.C. §§ 441a(a)(1)(A) or (2)(A) if it is determined after an investigation by the Commission that the contributor knowingly participated in the scheme to circumvent the Act.

CONCLUSION

For the reasons set forth above, the Federal Election Commission must initiate enforcement actions against the DSCC and Docking For U.S. Senate.

John D. Heubusch
Executive Director
National Republican Senatorial Committee

VERIFICATION

The undersigned complainant swears that the statements in the Complaint are based on the sources indicated, and, as such, are true and correct to the best of his information and belief.

John D. Heubusch

District of Columbia)
) ss

Subscribed and sworn to before
me this 7th day of October, 1996

Notary Public

My Commission Expires Nov. 30, 2000

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National Republican Senatorial Committee

EXHIBIT 1

SENATOR PHIL GRAMM
CHAIRMAN

JOE HENSARLING
EXECUTIVE DIRECTOR

September 24, 1992

Mrs. Joan Aikens
Chairman
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

MUR 3620

92 SEP 24 AM 11:30

Dear Madam Chairman:

This letter constitutes a formal complaint filed under 2 U.S.C. 437g(a) of the Federal Election Campaign Act ("FECA") on behalf of the National Republican Senatorial Committee (the "NRSC"). It is the NRSC's belief, based on information set out below, that the Yeakel for Senate Committee (the "Yeakel Campaign"), the Feinstein for Senate Committee (the "Feinstein Campaign"), the Terry Sanford for U.S. Senate Committee (the "Sanford Campaign") and the Democratic Senatorial Campaign Committee (the "DSCC"), political committees registered with the Federal Election Commission ("the Commission"), have violated FECA and the Commission's regulations.

As the Commission well knows, under the law, all personal contributions that are "earmarked" for a particular candidate are deemed contributions from the contributor to the candidate. 11 C.F.R. 110.6(a). This precludes both the candidate and the contributor from evading the limits FECA imposes on the amount any person may contribute to a federal campaign. Based upon the evidence set out below, the NRSC believes that the Yeakel Campaign, the Feinstein Campaign, the Sanford Campaign and the DSCC have violated these legal provisions.

The DSCC has repeatedly and openly solicited contributions from persons who wish to avoid federal limitations. The Yeakel Campaign, the Feinstein Campaign and the Sanford Campaign have obviously sought to take advantage of the DSCC's solicitations:

RONALD REAGAN REPUBLICAN CENTER
425 SECOND STREET N.E. • WASHINGTON, D.C. 20002 • (202) 675-6000

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1. In the invitation attached at Exhibit 1, the DSCC announced that its "U.S. Senate Campaign Countdown" is "designed for a senate campaign's maxed-out donors and top contributors who are interested in further supporting their candidates through the DSCC's tally system. The DSCC provides donors with the opportunity to tally contributions to the Democratic Senate nominees of their choice." The invitation included a form by which the contributors could "tally" an explicit amount to candidates of their choice.

2. In the memorandum attached at Exhibit 2, the DSCC defined its "tally" option as ensuring that individuals could earmark large contributions to particular candidates and thus evade federal limitations.

3. In the memorandum attached at Exhibit 3, the DSCC encouraged all Senate staff and campaign finance directors "to encourage maxed-out and high dollar contributors to tally $10,000 or more (per couple) in new money to their preferred Democratic Senate candidate(s)."

4. In the document attached at Exhibit 4, Senate candidate Dianne Feinstein, acting on the encouragement of the DSCC, asked her contributors to evade federal limitations through "the DSCC tally."

5. In the document attached at Exhibit 5, Senate candidate Terry Sanford, also encouraged by the DSCC, asked his contributors to evade federal limits through the "tally sheet."

6. In the invitation attached at Exhibit 6, Norman Braman asks contributors to honor "Lynn Yeakel, Candidate for United States Senate," with a $5,000 contribution made payable to the DSCC.

These documents show that the Yeakel Campaign, the Feinstein Campaign, and the Sanford Campaign are engaging in a common scheme or design to circumvent and violate federal law when it comes to raising campaign contributions. The Yeakel Campaign's current active solicitation of large contributions and the DSCC's plan to target "maxed-out" donors, combined with the DSCC's pledge to "tally" contributions to favored candidates and the DSCC's long-standing promise to make a Yeakel victory a national priority, virtually ensure that the DSCC intends to continue its scheme and to "honor" Lynn Yeakel by "tallying" contributions raised at the upcoming Braman fundraiser.

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The NRSC believes that this attempt to launder contributions and evade the law must be condemned. Accordingly, I ask that the Commission's Office of General Counsel expeditiously review this complaint and take appropriate action with regard to these apparent violations of the FECA.

The above is true and correct to the best of my knowledge, information and belief.

Respectfully,

Jay Velasquez
on behalf of the
National Republican Senatorial Committee

National Republican Senatorial Committee

Sworn to and subscribed

before me this 24 day
of Sept, 1992

Notary Public

Notary Public, District of Columbia
My Commission Expires July 14, 1997

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EXHIBIT 2

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A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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AUG 18 12 27 PM '94

August 17, 1994

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

Re: MUR 4010

Dear Mr. Noble:

The Democratic Senatorial Campaign Committee ("DSCC") seeks by this letter immediate dismissal of the complaint filed by the National Republican Senatorial Committee ("NRSC") on July 18, 1994. That complaint alleges in "Count II" that DSCC in collaboration of Respondents, Dianne Feinstein and her principal campaign committee, The Feinstein for Senate, have violated or "are about to violate" the Act by engaging in prohibited "earmarking."*

The NRSC in this case and in others still pending has rehearsed these same allegations before. That Committee typically identifies some representation in fundraising materials, then mischaracterizes those representations or their legal significance; and when is all done, fashions out of these misrepresentations a supposed "earmarking" case. But the NRSC, having missed the mark before in these matters, misses it yet again on this occasion.

TALLY PROGRAM

DSCC has stated before in responding to MURs 3617, 3620, 3653 and 3658 and repeats here the essential background about the tally program not mentioned by NRSC.

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* NRSC also alleges that a letter prepared by a DSCC supporter hosting an event in her home omitted the "disclaimer" required under 2 U.S.C. § 441d. That section applies, however, to "general public political advertising," whereas the letter in question was a personal invitation to "a small group of women" to attend an in-home fundraising event.

[04005-0048/DA942290.030]

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The Tally Sheet is an informal accounting process established by the DSCC to keep track of the amount of money raised for the Committee's use by a particular candidate. The program is simply and exclusively an information gathering procedure. Each contribution raised for the DSCC by a candidate is "tallied" or credited to that candidate's "tally sheet." The total amount of money raised by a particular candidate for the Committee is then taken into consideration as one of several factors used by the DSCC when it decides on funding decisions under the spending authority provided at 2 U.S.C. § 441a(d).

DSCC has an express policy of not accepting earmarked contributions. When a contribution is received by the DSCC with a designation by a contributor which would appear to constitute earmarking, a letter is sent to clarify the contributor's intent. Sample copies of this letter have been provided to the Commission in connection with its response to MURs 3617, 3620, 3653 and 3658. As the letter shows, the DSCC offers the opportunity of a refund to each contributor who did not intend to "tally" to a particular candidate.

All tallied contributions (and all other contributions) are placed into the general DSCC bank accounts and used entirely at the DSCC's discretion. The funds tallied to a particular candidate are not "passed through" the DSCC to the candidate who helped raise the funds. Nor are the funds spent on a dollar-for-dollar exchange for the amounts raised by a candidate. When funds are deposited in the DSCC's account, they are used for the Committee's most pressing expenses first. This may be, for example, administrative expenses of the DSCC, or Section 441a(d) spending on behalf of another candidate. There are examples of a candidate who raised large amounts of money for the DSCC (such as the case of a barely challenged incumbent), but received little or no Section 441a(d) funding in return. Similarly, there are candidates who have raised little or no money for the Committee, but received full funding under the relevant contribution and expenditure limitations available to the DSCC.

The DSCC has never raised sufficient funds to "max out" under the coordinated party spending limits to each of its party's Senate nominees in any election cycle. Because of this, the Committee has had to ensure that the monies the party did have available were used to the maximum effect. To this end, in determining which candidates will receive funding

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under Section 441a(d) and to what extent, the DSCC looks to a variety of factors:

- Whether the race is winnable;
- Whether the candidate has a serious challenger;
- Whether the candidate has been successful in his or her own campaign's fundraising;
- Whether the candidate has assisted the DSCC in its fundraising efforts;
- Whether the DSCC has more pressing expenditures that must be made.

These criteria have been provided and emphasized repeatedly, orally and in writing, to DSCC contributors and Democratic candidates. The significance of the tally, in short, is its role as an incentive to its candidates to support its fundraising efforts. The Committee operates under the direction of Democratic United States Senators and candidates for the benefit of all Democratic Senate candidates, both incumbent and challenger. As the Committee has no independent funding source, it must drawn on their efforts to raise the monies required to perform its functions.

An earmarked contribution is one which is made with:

> a designation, instruction or encumbrance, whether direct or indirect, express or implied, oral or written, <u>which results in all or any part of a contribution or expenditure being made to, or expended on behalf of a clearly identified candidate</u> or a candidate's authorized committee.

11 C.F.R. § 110.6(b)(2) (emphasis added). None of the contributions received by the DSCC and tallied to a particular candidate can be considered earmarked, since such tallied contributions do not result in the funds being spent on behalf of a particular candidate designated by the contributor, nor are contributors allowed to so condition these contributions.

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REPRESENTATIONS IN NRSC COMPLAINT

NRSC constructs its tally case out of a letter proposed by Ms. Lynn Cutler who by that letter was inviting potential contributors to an event in her home for the Women's Council of the DSCC. The Women's Council is a project of DSCC, dedicated to the support of women seeking election to the U.S. Senate as Democrats. In her letter, Ms. Cutler encouraged recipients of the letter to contribute to DSCC's Women Council and "tally" their contributions to Ms. Feinstein. NRSC cites, particular, Ms. Cutler's statement that contributions tallied in this way "will go to [Senator Feinstein's] effort."

Ms. Cutler has acknowledged that her representations were not authorized by the DSCC. Also, she is not a donor. At most NRSC might be expressing "concern" that the wording of this letter would encourage donors to believe that a "tally" was an "earmarking" instruction or to "earmark" their contributions.

There is no evidence that such is the case. Any inaccuracy in the wording of this letter, by someone admittedly acting without authorization of the DSCC, cannot bind the DSCC or influence its liability or the liability of any other donors under the Act. DSCC has made available to donors and to the Commission a precise explanation of "tally" and it acts promptly to correct any misunderstanding about "tally." DSCC does not accept earmark contributions and any contributions so earmarked are immediately returned to the contributor. At all times DSCC maintains full control over the funds that it raises and discretion in the expenditure of those monies.

GENERAL LEGAL CONSIDERATIONS

As we noted, the Commission has once before, 17 years ago, addressed directly the line of demarcation between "earmarking" and party fundraising under section 441a(d) which focuses appeals on the candidates who will benefit from strong party funding and also enlists those candidates in fundraising efforts. In MUR 377, the Commission concluded that a rulemaking would be required to clarify the issues and develop the appropriate legal standards distinguishing the permissible from the impermissible. The Commission has taken no action since then.

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The standard remains, therefore, unelaborated and, for all practical purposes, unavailable to organizations such as DSCC. Yet DSCC depends vitally as a party organization on its known relationship to and support for candidates affiliated with the same political party.

In these circumstances, Courts have ruled that, in enforcing its governing statute, a federal agency must proceed in accordance with "ascertainable standards." See Pension Benefit Guaranty Corp. v. LTV Corp., 875 F.2d 1008, 1021 (2d Cir. 1987); Patachogue Nursing Center v. Bowen, 797 F.2d 1137, 1143 (2d Cir. 1986); Holmes v. New York City Housing Authority, 398 F.2d 262, 265 (2d Cir. 1968), cert. denied, 479 U.S. 1030 (1987); Baker-Chaput v. Cammett, 406 F.Supp. 1134, 1140 (D.N.H. 1976)("The establishment of written, objective and ascertainable standards is an elementary and intrinsic part of due process.")

While a federal agency may establish such standards through adjudicatory proceeding or rulemaking, it may not act with uncontrolled discretion and absent an ascertainable standard by which parties are put on notice. See generally, Matlovich v. Secretary of the Air Force, 591 F.2d 852, 861 (D.C. Cir. 1978). Although courts have not dictated the use of one method over another, the advantages of rulemaking have been recognized. See e.g., Id. at 861; Standard Rate and Data Service, Inc. v. United States Postal Service, 584 F.2d 473 (D.C. Cir. 1978)(..."rulemaking assures that any modification in position will represent a generalized approach to a general problem, avoiding the uneasiness that results from the greater possibility of discrimination in a case-by case approach"...) (Leventhal, J., concurring).

The Commission has nonetheless addressed two cases bearing on the issues in this case. In MUR 2632, the Commission addressed the issue of earmarked contributions through a state party committee. This case is distinguishable from the matter before the Commission here, inasmuch as the Commission found in that case a clear designation of the funds by the contributor (despite denials of the contributor) and the apparent use of the funds, in fact, to benefit the designated candidate. Moreover, in MUR 2632, unlike this case, a condition of "earmarking" -- that the designation "results in" the contribution being spent in full to benefit the designated candidate -- appears to have been satisfied.

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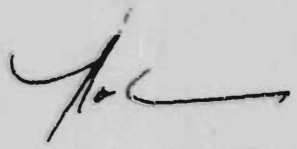
In a recent case, pre-MUR 261 (1994), the Commission considered a recommendation of the Office of General Counsel in the matter of a contribution made from surplus funds from the former Governor of Florida, Bob Martinez, to the Republican Party of Florida. Mr. Martinez forwarded the contribution to the Party with the stated "hope" that it would be used to support the Bush-Quayle Republican Presidential ticket. The General Counsel concluded that this statement bound the Party in the receipt of the funds, indicating that it was "earmarked for federal activity." See, First General Counsel's Report, at 7 (June 17, 1994). As a result, the party could not accept the contribution for the federal account (the amount far exceeding any limit available under the Act), or for the nonfederal account since the Martinez statement would preclude any use for nonfederal purposes. The Commission, however, rejected the OGC's recommendations by a vote of 5-0.

The Commission did not explain its rationale, but it should be apparent that the Martinez case presents "earmarking" elements not at all present in these DSCC matters. First Martinez(or his committee) was the donor, so unlike the case here, the statement made was the donor's and the donor's intent was squarely at issue. Second, the donor did make a statement, a clear one, of preference that the contribution be used for federal election related purposes. Third, the party received the contribution and apparently took no action to clarify the use it expected to make of the contribution.

So to the extent that pre-MUR 261 speaks at all to the issues in this case, it supports a dismissal of the claims made by NRSC against DSCC.



Robert F. Bauer
B. Holly Schadler
Counsel to Democratic
Senatorial Campaign
Committee

[04005-0048/DA942290.030]

8/17/94

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EXHIBIT 3

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3617
Feinstein for Senate Committee and Michael J. Barrett, as treasurer.	)	
	)	
Feinstein for Senate Committee and Michael J. Barrett, as treasurer; Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer; Yeakel for Senate Committee and Sidney D. Rosenblatt, as treasurer; Sanford for Senate Committee and Alton G. Buck, as treasurer.	)	MUR 3620
	)	
Abrams Committee, f/k/a Abrams '92 Committee and Lawrence B. Buttenwieser, as treasurer.	)	MUR 3658

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on October 4, 1994, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions with respect to MURS 3617, 3620, and 3658:

A. MUR 3617: Merge this matter into MUR 3620, and hereafter refer to this matter as MUR 3620.

B. MUR 3658: Merge this matter into MUR 3620, and hereafter refer to this matter as MUR 3620.

(continued)

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C. MUR 3620:

1. Find reason to believe that the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, violated 2 U.S.C. § 441a(a)(8) 11 C.F.R. § 110.6 (c)(1); 11 C.F.R. § 110.6(b)(2) (iii) and 11 C.F.R. § 102.8.

2. Find reason to believe that the Feinstein for Senate Committee and Michael J. Barrett, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6 (c)(2).

3. Find reason to believe that the Sanford for Senate Committee and Alton G. Buck, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2).

4. Find reason to believe that the Abrams Committee, f/k/a Abrams '92 Committee, and Lawrence B. Buttenwieser, as treasurer, violated 2 U.S.C. 441a(f) and 11 C.F.R. § 110.6(c)(2).

5. Find no reason to believe, based on the allegations of the complaint, that the Yeakel for Senate Committee and Sidney D. Rosenblatt, as treasurer, violated 2 U.S.C. § 441a(f) or any other applicable section of the Act and close the file as to these Respondents.

(continued)

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6. Open a MUR and find reason to believe that the Coverdell for Senate Committee and Marvin Smith, as treasurer, violated 11 C.F.R. § 110.6(c)(2).

7. Approve appropriate letters pursuant to the actions taken in these matters and the Commission discussion.

8. Approve the Factual and Legal Analyses attached to the General Counsel's September 19, 1994 report subject to the revisions agreed upon during the meeting discussion.

9. Approve the Subpoenas for the Production of Documents and Answers to Interrogatories to the Democratic Senatorial Campaign Committee, the Feinstein for Senate Committee, the Sanford for Senate Committee, the Abrams Committee, f/k/a Abrams '92 Committee, and the Coverdell for Senate Committee, as recommended in the General Counsel's September 19, 1994 report

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

Attest:

10-5-94
Date

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

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EXHIBIT 4

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer	)	
Abrams Committee, f/k/a Abrams '92 and Lawrence B. Buttenwieser, as treasurer	)	MUR 3620
Feinstein for Senate '94 and Michael J. Barrett, as treasurer	)	
Sanford for Senate Committee and Alton G. Buck, as treasurer	)	

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
'95 AUG 16 11 44 AM

CONCILIATION AGREEMENT

This matter was initiated by signed, sworn, and notarized complaints by the National Republican Senatorial Committee and the John Seymour for U.S. Senate Committee. The Federal Election Commission ("Commission") found reason to believe the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, ("DSCC" or "Respondents") violated 2 U.S.C. § 441a(a)(8); 11 C.F.R. § 102.8; 11 C.F.R. § 110.6(b)(2)(iii); and 11 C.F.R. § 110.6(c)(1). The Commission also found reason to believe that the Abrams Committee, f/k/a Abrams '92, and Lawrence B. Buttenwieser, as treasurer; Feinstein for Senate '94, and Michael J. Barrett, as treasurer; and Sanford for Senate Committee, and Alton G. Buck, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2).

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

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

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

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

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

1. The Democratic Senatorial Campaign Committee is a national committee within the meaning of 2 U.S.C. § 431(14).

2. Donald J. Foley is treasurer of the Democratic Senatorial Campaign Committee.

3. A contribution made by a person, either directly or indirectly, on behalf of a particular candidate, which is in any way earmarked or otherwise directed through an intermediary or conduit, shall be treated as a contribution from such person to such candidate. 2 U.S.C. § 441a(a)(8).

4. Earmarked is defined as a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee. 11 C.F.R. § 110.6(b)(1).

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5. A conduit or intermediary means any person (except for a few limited exceptions not applicable to this matter) who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee. 11 C.F.R. § 110.6(b)(2).

6. 11 C.F.R. § 110.6(b)(2)(iii) provides that any person who receives an earmarked contribution shall, among other requirements, forward such earmarked contribution to the candidate or authorized committee in accordance with 11 C.F.R. § 102.8.

7. Section 102.8 provides, inter alia, that earmarked contributions must be forwarded no later than 10 days after receipt.

8. Pursuant to 2 U.S.C. § 441a(a)(8), the intermediary or conduit of an earmarked contribution must report the source of the contribution and the intended recipient to the Federal Election Commission and to the intended recipient. See also, 11 C.F.R. § 110.6(c)(1).

9. Recipient candidates or candidate committees must report earmarked contributions and each conduit or intermediary, who forwards one or more earmarked contributions which in the aggregate exceed $200 in any calendar year in accordance with 11 C.F.R. § 110.6(c)(2).

10. The national committee of a political party may make expenditures in connection with the general election campaign of a candidate for the office of Senator or of a Representative from a state which is entitled to only one Representative that equals the greater of two cents multiplied by the voting age population of the state, or $20,000. 2 U.S.C. § 441a(d); 11 C.F.R. § 110.7(b).

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11. The Federal Election Campaign Act of 1971, as amended, (the "Act") does not prohibit party committees from referring to and promoting party candidates in soliciting funds for the committee and candidates may assist party committees in soliciting funds for the committee.

12. The DSCC has utilized and utilizes a "tally" program as a means of raising funds on behalf of Democratic senate candidates. Tallied funds are used in part to fund coordinated party expenditures pursuant to 2 U.S.C. § 441a(d) as well as other DSCC activities on behalf of its candidates.

13. Under this program a contributor has the option to "tally" a contribution to the DSCC in the name of a particular candidate, thereby expressing support for that candidate or crediting the candidate with the raising of the contribution for the DSCC's "coordinated expenditure" program and other activities.

14. As part of the tally program, the DSCC and the candidate committees produced and distributed fundraising solicitations requesting contributions be sent to the DSCC and indicating that the contributors can tally their contributions to a specific candidate.

15. Some of these solicitations can be fairly read to solicit earmarked contributions and did not contain further clarification and explanation to avoid such a reading; the following examples are illustrative:

a. "For those of you who have already maxed out to my campaign, the DSCC tally is an avenue through which you can offer more support";

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b. "[My] race will be close: the tally sheet will be of vital importance";

c. "As an individual, you can contribute up to $1,000 directly to my committee. Contributions in excess of $1,000 must be made payable to the DSCC and marked for my tally";

d. "You can tally your [DSCC] membership to [__'s] campaign. This means that those dollars will go to [__'s] effort";

e. The response card to a request from a candidate's committee to serve on the host committee for a fundraiser on behalf of the candidate, which provided no explanation of the DSCC's tally program, read as follows:

> Please reserve a space in my name on the invitation as a Benefactor -- enclosed is my check for $5,000 (payable to the "Democratic Senatorial Campaign Committee"' marked for [__'s] tally) or I pledge to raise $5,000. Patron -- enclosed is my check for $2,500 (payable to the "Democratic Senatorial Campaign Committee" marked for [__'s] tally) or I pledge to raise $2,500. Sponsor -- enclosed is my check for $1,000 (payable to "[__] for Senate") or I pledge to raise $1,000;

f. "I must raise an additional $4 million dollars over the next few weeks. . . . I am counting on you to help me pull it off. If you and [__] have any room to make additional federal contributions, I would be grateful if you could tally money to the DSCC for this effort to defeat [my opponent]";

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g. "If you could make a $2,000 contribution to [my committee] and a $10,000 contribution to the DSCC for this effort to defeat [my opponent], it would be one of the building blocks of my campaign";

h. "If you choose to contribute through the DSCC, it is very important that you enclose a letter with your contribution indicating that it is meant for [my tally]. I hope you will consider this as our campaign really needs the support".

16. It was the DSCC's stated policy and practice to inform contributors that the DSCC did not accept earmarked contributions, that the amount of tallied contributions was a significant factor that the DSCC took into account in deciding the amount of 441a(d) expenditures to be made on behalf of a particular candidate, and that the DSCC retained final discretion regarding the use of any tallied contribution. The DSCC acknowledges that this information was not always conveyed to contributors.

17. Some percentage of contributors who responded to these "tally" solicitations earmarked their contributions to the DSCC on behalf of a particular candidate.

18. During the 1992 cycle, the DSCC raised approximately $8,500,000 in tallied funds. During the 1994 cycle, the DSCC raised approximately $11,000,000 in tallied funds. The Commission is not taking the position that all tallied contributions were earmarked, but, without conducting a full investigation, the percentage of contributors who intended that their tallied contributions be earmarked cannot be determined.

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19. The Commission acknowledges that the DSCC may not have intended to solicit earmarked contributions.

20. The tallied contributions that were earmarked for a designated candidate were not treated as earmarked by the DSCC, viz. forwarded to the recipient candidate committees within 10 days, reported as earmarked by the conduit and recipient, and applied to each contributor's limit to the candidate committee's campaign.

V. Because the parties desire an expeditious resolution of this matter, the parties enter into this conciliation agreement prior to the Commission completing its investigation. The parties agree that --

1. The DSCC and certain of its candidates prepared and distributed fundraising solicitations for the DSCC's tally program which can be fairly and reasonably read to mean that contributions would be earmarked for a particular candidate within the meaning of 2 U.S.C. § 441a(a)(8). In response to these solicitations, some contributors earmarked their contributions to the DSCC for a particular candidate.

2. Consistent with its stated policy and practice of not accepting earmarked contributions, the DSCC did not treat such tallied contributions as being earmarked for the designated candidate. When a contribution has been earmarked by a contributor for a particular candidate, a political committee receiving the contribution must follow the requirements of the Act, which the DSCC did not do in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 102.8, 110.6(b)(2)(iii) and

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110.6(c)(1). Some of the funds received by the candidate committees as coordinated party expenditures from the DSCC were earmarked contributions which the DSCC, inter alia, failed to report as earmarked contributions and the candidate committees, in turn, did not report as earmarked contributions, in violation of 11 C.F.R. § 110.6(c)(2).

3. The parties agree that the solicitations could have been clarified to avoid soliciting earmarked contributions by additional DSCC efforts to assure that its staff and the candidate committees had a better understanding of the tally program and communicated this understanding more effectively to donors when soliciting for the DSCC's tally program.

VI. 1. DSCC will pay a civil penalty to the Commission in the amount of seventy-five thousand dollars ($75,000), pursuant to 2 U.S.C. § 437g(a)(5)(A); such penalty to be paid as follows:

a. An initial payment of $25,000 due within 30 days after the effective date of this conciliation agreement.

b. Thereafter, two consecutive monthly installment payments of $25,000 each, due 60 and 90 days after the effective date of this conciliation agreement.

c. In the event that any installment payment is not received by the Commission by the fifth day after it becomes due, the Commission may, at its discretion, accelerate the remaining payments and cause the entire amount to become due upon ten days written notice to the DSCC. Failure by the Commission to

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accelerate the payments with regard to any overdue installment shall not be construed as a waiver of its right to do so with regard to future overdue installments.

2. The DSCC agrees to implement the following remedial steps.

a. For contributions to the DSCC that appear to be earmarked, the DSCC will refund the contributions or forward the contributions to the designated candidate, in accordance with 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 102.8, 110.6(b)(2)(iii), and 110.6(c)(1).

b. On an on-going basis, the DSCC will provide additional education and training to DSCC staff and participants in the tally program, including the staff of Democrutic senate candidates, which will emphasize that: (1) DSCC does not accept contributions earmarked for a particular candidate; (2) tallied contributions will be spent for DSCC activities and programs as the Committee determines within its sole discretion; and (3) contributors must be advised of (1) and (2) above when the DSCC and tally program participants solicit tallied contributions.

c. The DSCC will utilize standard language in its solicitations pertaining to the tally program and, as part of its education and training, will instruct its tally participants to .nclude this language in solicitations distributed by such candidates, their committees and their agents. This language will provide, in substance, that the DSCC does not accept contributions earmarked for a particular candidate and that tallied

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contributions will be used as the DSCC determines in its sole discretion. At a minimum, the language will state that:

> The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

d. The DSCC will implement reasonable procedures to review DSCC and Democratic Senate candidate fundraising solicitations pertaining to the tally program to ensure that the solicitations cannot be reasonably read to solicit earmarked contributions, in accordance with the requirements of Section VI(2)(b)-(c) of this agreement.

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

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

IX. Except as provided in Section VI, paragraph (1)(b)-(c), Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

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

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

Date 8-21-95

FOR THE RESPONDENTS:

Robert F. Bauer
Counsel to Democratic
Senatorial Campaign Committee

Date 8-11-95

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EXHIBIT 3

THE TRAIL TO THE MAJORITY BEGAN IN OREGON

Please join

Senator Thomas A. Daschle
Democratic Leader

Senator J. Robert Kerrey
Chairman, The Democratic
Senatorial Campaign Committee

and

The Democratic Members of
the United States Senate

for the

TAKE BACK THE SENATE DINNER

Wednesday, March 6, 1996
East Hall - Union Station
Washington, DC

Reception 6:00 pm
Dinner 7:30 pm

Business Attire
Reply Card Enclosed
Please RSVP at (202) 224-2447

Honorees

The Hon. Bruce Babbitt
The Hon. Jesse Brown
The Hon. Ron Brown
The Hon. Carol Browner
The Hon. Henry Cisneros
The Hon. Dan Glickman
The Hon. Mickey Kantor
The Hon. Hazel O'Leary
The Hon. Leon Panetta
The Hon. Federico Peña
The Hon. Robert Reich
The Hon. Richard Riley
The Hon. Alice Rivlin
The Hon. Robert Rubin
The Hon. Donna Shalala

Co-Chairs

AFL-CIO
Ben and Melanie Barnes
Robert A. Blair
Bill Boyd
Arthur Cox
Communication Workers of America
Robert B. Crowe
Dionne Davies
Lloyd DeVos
International Brotherhood of Electrical Workers
Ramesh V. Kapur
Michael Lewan
Charles T. Manatt
Larry O'Brien
Steve Powell
Doreen Yancey

Vice Chairs

American Association of Opthalmology
American Nurses Association
American Physical Therapy Association
AT&T
Barnett Banks, Inc.
Leonard Bickwit, Jr.
Moe Biller, AFWU
Elizabeth Birch
James Brunkenhoefer
Stanley M. Chesley
The Davidson Coiling Group
Tad Davis
Tom Dennis
Julie Domenick
Pepper English
Fluor Corporation
Monte Friedkin
Barry Goldstein
William M. Hermelin
Jeffrey Hirschberg
International Brotherhood of Teamsters
Michael L. Kerley
J. Mark Leggett
Peter B. Lewis
Ellen Malcolm
John Merrigan
National Education Association
Tom O'Grady
Howard W. Randolph, Jr.
SBC Communications
Tom Scully
Randy Smith, NAHB
Sheleon and Sunny Smith
Frederick P. Somers
Southern California Edison
Dorothy Walsh
Sheryl W. Washington
WMX Technologies, Inc.
Daniel Zingale

Hosts

Amalgamated Transit Union
American Association of Nurse Anesthetists
Arnold & Porter
Robert Glennon
Tom Greene
G. David Hurd
Independent Bankers Association
The Principal Financial Group
Phoenix Home Mutual Life
Entergy PAC
David Rubenkin
John Rector
William R. Sweeney, Jr.
Textron Inc.
Robert M. Tobias
Carl Tuvin

Committee in Formation

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☐ Yes! I will attend the March 6 Dinner
($5,000 Contribution). Amount $

☐ No, I am unable to attend, but enclosed is
my Contribution of

PLEASE CONTRIBUTE $

FEC ID#

NAME OF PAC

ADDRESS

CITY ZIP

WASHINGTON REPRESENTATIVE OF THE PAC AND/OR
SPONSORING GROUP

PERSON(S) ATTENDING THE DINNER

TREASURER OF PAC

CHECK SIGNED BY

TALLY TO SENATOR

CONTRIBUTIONS THROUGH THE EXPRESS

TICKETS UNDER THE NAME OF RESERVE

Contributions are not tax deductible. Paid for and authorized by the Democratic Senatorial Campaign Committee. Donald J. Foley, Treasurer 430 South Capitol Street, S.E. Washington, DC 20003. (202) 224-2447

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Individual Contribution

Please make checks payable to the Democratic Senatorial Campaign Committee. If you prefer to pay by credit card, please complete the following information:

❒ Visa ❒ MasterCard

Number _____ Exp. Date _____

Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of $200 in a calendar year

Name _____

Address _____

City _____ State _____ Zip _____

Phone _____ Business Phone _____

Title or Position _____ ❒ Self Employed

Employer (or firm) _____

Business Address _____

City _____ State _____ Zip _____

Please tally my contribution to: _____

Contribution through the efforts of: _____

Tickets under the name: _____ Reserve: _____

For seating purposes, contributions should be received no later than March 1. Payment prior to the Dinner is required. Contributions are not tax deductible.

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- The Democratic Senatorial Campaign Committee (DSCC) is a national party committee formed by the Democratic members of the U.S. Senate to help raise funds to provide campaign services for Democratic U.S. Senate incumbents and candidates throughout the country.

- Under federal law, the DSCC may contribute up to $17,500 per election cycle to candidates for the U.S. Senate. In addition, the DSCC may make expenditures in connection with the general election campaigns of Democratic nominees for the U.S. Senate. The amount the DSCC may spend on behalf of a nominee is based on the voting age population of that nominee's home state. The DSCC raises funds in a variety of ways - through DSCC donor programs, the Next Majority Trust, Leadership Circle, DSCC Roundtable and Women's Council; and through special events and national fundraising activities.

- The DSCC can accept donations from individuals up to $20,000 per calendar year (not to exceed the total $25,000 yearly federal limit for an individual) and from PAC's up to $15,000 per calendar year.

- The DSCC maintains a record (a "Tally") of how much money each candidate helps raise for the Committee. The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

- Paid for and authorized by the Democratic Senatorial Campaign Committee, Donald J. Foley, Treasurer. Contributions are not tax deductible.

EXHIBIT 6

Senator Carl Levin

October 9, 1995

Ms. Lisa Learner Maher
Chrysler Corporation Nonpartisan PAC
1100 Connecticut Avenue N.W.
Suite 930
Washington, DC 20036

Dear Lisa:

On Wednesday, November 1, 1995 the Democratic Senatorial Campaign Committee is having a major dinner with Democratic Members of the United States Senate. Former Governor Ann Richards will be the guest speaker. Your support of the DSCC is very important to me.

It would be a tremendous help to me if you would buy a ticket or a table and credit your contribution to me. The requested contribution is $1,500 per person. This fundraising event is crucial to my reelection effort next year.

The DSCC maintains a record (a "tally") of how much money each candidate helps to raise for the Committee. The amount of money to be spent by the DSCC on my behalf is based in part on my tally, among other factors, like my likelihood of winning and my need for DSCC funds. It would be a big help if on the response card you would credit your contribution to me and if you want, request to sit at my table.

If you have any questions, please feel free to call me or Tina Stoll at (202) 544-8963. Your support is greatly appreciated. I hope to see you on November 1.

Sincerely,

Carl Levin

Paid for by Friends of Senator Carl Levin
230 Massachusetts Avenue N.E. Suite 202 Washington, DC 20002 (202) 544-8963 Fax (202) 546-2321
Contributions are not deductible for Federal income tax purposes.

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EXHIBIT 7

Senator Carl Levin

December 29, 1995

Mr. William Dyer
National Structured Settlements PAC
1420 16th Street, NW
Washington, DC 20006

Dear William:

I want to keep you up-to-date on the 1996 Michigan Senate race.

Right now, my prospects look pretty good. My poll numbers are solid, my campaign organization is coming together, and I'm confident that I have a good record to run on. My warchest (over $2 million raised, $1.5 million cash-on-hand) appears, at glance, to be enough to prevail.

However, I'm concerned about running as an incumbent in an anti-incumbent time. I'm also concerned about the spending capabilities of my opponents: a multi-millionaire who just wrote himself a $700,000 check (and has vowed to spend up to $8 million to defeat me), and a well-known talk show host. The media campaign needed to stand against either one of these challengers will be tremendously expensive.

The DSCC maintains a record (a "tally") of how much money each candidate helps to raise for the Committee. The amount of money to be spent by the DSCC on behalf of the party nominee is based on the nominee's tally record and, among other factors, the nominee's likelihood of winning and need for DSCC funds.

That's why I'm hoping you will be able to help me in a very specific way: **would you be able to tally all or part of your 1996 DSCC contribution to me?** I would greatly appreciate it.

Please do not hesitate to contact me or Tina Stoll at (202) 544-8963 if you have any questions about this. Thanks for your support.

Sincerely,

Carl Levin

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Paid for by Friends of Senator Carl Levin
236 Massachusetts Avenue, N.E., Suite 202, Washington, DC 20002 (202) 544-8963 Fax (202) 544-[illegible]

EXHIBIT 8

April 17, 1995

To: Tina
From: Liz
Re: Senator Levin calls

Here are some good tally calls for Senator Levin. The first set are the calls for the May 9th reception here in Washington. I have attached the fact sheet. These calls are event specific and many are past contributors for the Senator. These are our first priority. He should know most of the individuals. They are all Democrats, Jewish and politically active. I have given you a lot. He should call whoever he knows and feels comfortable about.

I have also included an event specific call for our Banking Breakfast on May 4th.

The others are basic donor club/tally calls that seem suited for Senator Levin. They are in priority order. All club information is included also. I am not sure if the Senator is familiar with the benefits of the different clubs.

Please disregard all past call sheets. They have since been updated and are included.

Thanks Tina. If you have any questions, call me at 202-485-3136. Let me know how it goes.

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Mr. Sam Dawson "Sam"
United Steelworkers of America
815 16th Street, N.W., 7th Floor
Washington, DC 20006
(202)638-6929 (B)

PAC Contributor; Status is Active

Levin call (03/27/95 - young)
Please call Sam and ask that they give $15K to the DSCC as soon as possible to help retire our debt. The contribution can be tallied to your race.

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	$0.00
1994	$15,000.00
1993	$15,000.00
1992	$15,000.00
1991	$15,000.00
1990	$15,000.00
1989	$15,000.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

CLUB INFORMATION:

LA A Dec 31, 1995
LC A Jan 25, 1994 Renewed for Cong. Dinner

ALL ADDRESSES:
Five Gateway Center, Pittsburgh, PA 15222
815 16th Street, N.W., 7th Floor, Washington, DC 20006

ALL PHONES:
(202)638-6929 (Business)
(412)562-2371 (Business)
(412)562-2400 (Business)
(202)347-6735 (Fax)

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- Call Results -

Mr. George B. Gould "George"
Asst. to the President
National Association of Letter Carriers
100 Indiana Avenue, NW
Washington, DC 20001
(202)393-4695 (B)

PAC Contributor; Status is Active

Levin call (03/28/95 - young)
Please call George and ask that he give at least $5,000 of his $15,000 annual commitment to the DSCC now.

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	$0.00
1994	$15,000.00
1993	$15,000.00
1992	$15,000.00
1991	$15,000.00
1990	$15,000.00
1989	$15,000.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

CLUB INFORMATION:

ALL ADDRESSES:
100 Indiana Avenue, NW, Washington, DC 20001

ALL PHONES:
(202)393-4695 (Business)
(202)737-1540 (Fax)

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- Call Results -

Mr. Andrew T. Malleck "Andy"
National Legislative Representative
Maintenance of Way Employees
400 North Capitol Street, N.W., Suite 852
Washington, DC 20001
(202)638-2135 (B)

PAC Contributor; Status is Active

Levin call (03/28/95 - young)

Their cash on hand as of the last FEC filing on 12/31/94 was $52,508. They did not give any money to the DSCC last cycle. Please ask them to resume their support of the DSCC and to commit to giving $15K this year. The monies may be tallied to your campaign.

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	$0.00
1994	$0.00
1993	$15,000.00
1992	$15,000.00
1991	$15,000.00
1990	$15,000.00
1989	$15,000.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

CLUB INFORMATION:

LA E Dec 31, 1994
LC E Apr 1, 1994 Pays in installments of $2,000.

ALL ADDRESSES:
400 North Capitol Street, N.W., Suite 852, Washington, DC 20001

ALL PHONES:
(202)638-2135 (Business)
(202)737-3085 (Fax)

- Call Results -

9/0438048856

04/17/95 12:44 PM

Mr. Frederick H. Nesbitt "Fred"
Legislative Manager
International Association of Fire Fighters
1750 New York Avenue, NW
Washington, DC 20006
(202)737-8484 (B)

PAC Contributor; Status is Active

Senator Levin call **(04/17/95 - grossman)**
Please ask Fred to contribute $5,000 as soon as possible.

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	$0.00
1994	$6,000.00
1993	$3,000.00
1992	$5,000.00
1991	$4,500.00
1990	$400.00
1989	$0.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

CLUB INFORMATION:

LA A Dec 31, 1995
RT A Jun 10, 1995

ALL ADDRESSES:
1750 New York Avenue, NW, Washington, DC 20006

ALL PHONES:
(202)737-8484 (Business)
(202)737-8418 (Fax)

9704380485 7

- Call Results -

Mr. John Ford "John"
Director, Government Relations
Kellogg Better Government Committee
601 Pennsylvania Avenue, NW, Suite 900
Washington, DC 20004
(202)434-8262 (B)

PAC Contributor; Status is Active

Sen. Levin Roundtable Call (03/27/95 - grossman)
In the past, Kellogg has only given to the DSCC when solicited by yourself or Bob Carr. Please ask them to join the DSCC Roundtable by making a $5000 contribution and tallying to you.

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	$0.00
1994	$1,000.00
1993	$1,500.00
1992	$1,750.00
1991	$9,000.00
1990	$5,000.00
1989	$750.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

CLUB INFORMATION:

RT E Feb 1, 1992 he wants to sponsor an event for us

ALL ADDRESSES:
601 Pennsylvania Avenue, NW, Suite 900, Washington, DC 20004
One Kellogg Square, P.O. Box 3599, Battle Creek, MI 49016

ALL PHONES:
(202)434-8262 (Business)
(202)639-8238 (Fax)

9704380485 8

- Call Results -

Ms. Evelyn Dubrow "Evy"
Vice President
International Ladies Garment Workers Union
815 16th Street, N.W., Room 103
Washington, DC 20006
(202)637-5353 (B)

PAC Contributor; Status is Active

Levin call (03/28/95 - young)
ILGWU has not given to us since 1992 because they were unhappy with Senator Graham. Please ask them to resume their contributions to the DSCC. Their cash on hand as of 12/31/94 was $1,786,947. Their common reason for not contributing is a lack of funds. (?) Their contribution may be tallied to your race.

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	$0.00
1994	$0.00
1993	$0.00
1992	$15,000.00
1991	$15,000.00
1990	$15,000.00
1989	$15,000.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

CLUB INFORMATION:

LC E Jan 1, 1993 93' Upset with Sen. Graham for vote on textile bill.

ALL ADDRESSES:
1710 Broadway, New York, NY 10019
815 16th Street, N.W., Room 103, Washington, DC 20006

9704380485 9

- Call Results -

04/17/95 12:13 PM

Mr. Daniel Lucas "Dan"
Political Director
Service Employees International Union
1313 L Street, N.W.
Washington, DC 20005
(202)898-3200 (B)

PAC Contributor; Status is Active

Levin call (04/17/95 - Grossman)
Please ask Dan To contribute $15K to the DSCC this month and tally at least a portion to your campaign.

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	$0.00
1994	$15,000.00
1993	$15,000.00
1992	$15,000.00
1991	$15,000.00
1990	$15,000.00
1989	$15,000.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

CLUB INFORMATION:

ALL ADDRESSES:
1313 L Street, N.W., Washington, DC 20005

ALL PHONES:
(202)898-3352 (Business)
(202)898-3304 (Fax)
(202)898-3200 (Business)
(202)898-3217 (Business)

9704380486C

- Call Results -

Mr. Chuck Loveless "Chuck"
American Federation of State, County &
Municipal Employees
1625 L Street, NW, Fourth Floor
Washington, DC 20036
(202)429-5020 (B)

PAC Contributor; Status is Active

Levin Call (04/17/95 - Grossman)
Please ask Chuck to contribute $14K to the DSCC this month and tally at least a portion to your campaign.

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	$1,000.00
1994	$15,000.00
1993	$15,000.00
1992	$15,000.00
1991	$15,000.00
1990	$15,000.00
1989	$15,000.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

Mar 27, 1995 $1,000.00 LC St. Patrick's Day Breakfast

CLUB INFORMATION:

ALL ADDRESSES:
1625 L Street, NW, Fourth Floor, Washington, DC 20036

ALL PHONES:
(202)223-3413 (Aux. Fax)
(202)429-1185 (Business)
(202)429-1197 (Fax)
(202)429-5020 (Business)
(202)429-1100 (Business)

- Call Results -

9704380486 1

Mr. Larry Eanes "Larry"
COPE Director
United Rubber Workers
570 White Pond Drive
Akron, OH 44320
(216)869-0320 (B)

PAC Contributor; Status is Active

Senator Levin call **(04/17/95 - grossman)**
Please ask Larry to contribute $5,000 as soon as possible, and tally his contribution to you.

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	$0.00
1994	$5,000.00
1993	$5,750.00
1992	$10,750.00
1991	$5,000.00
1990	$5,000.00
1989	$5,100.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

CLUB INFORMATION:

LA A Dec 31, 1995
RT A Apr 1, 1995

ALL ADDRESSES:
570 White Pond Drive, Akron, OH 44320

ALL PHONES:
(216)869-5627 (Fax)
(216)869-0320 (Business)

9704380486 2

- Call Results -

Mr. Michael McLauchlan "Mike"
Comerica Incorporated PAC
211 West Fort Street
Detroit, MI 48226
(313)222-3688 (B)

PAC Contributor; Status is Active

Senator Levin Banking Call (04/17/94 - grossman)

The DSCC is hosting a small breakfast for the Banking Community on May 4 with Senators Kerrey, Dodd, Conrad, Murray and Bryan (see attached sheet for more information). Please ask Mike to participate in this breakfast (or send a representative) by contributing $5,000 to the DSCC and rallying to your campaign.

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	$0.00
1994	$0.00
1993	$0.00
1992	$1,000.00
1991	$0.00
1990	$0.00
1989	$0.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

CLUB INFORMATION:

ALL ADDRESSES:
211 West Fort Street, Detroit, MI 48226

ALL PHONES:
(313)222-3688 (Business)

9704380486 3

- Call Results -

Call Harriet

Mr. & Mrs. Jerome Zimmerman "Harriet and Jerome"
4 Via Los Incas
Palm Beach, FL 33480
(407)832-1512 (B)

Individual Contributor; Status is Active

Levin Call - AIPAC Reception (05/02/95 - Liz Silva)

Harriet is an officer of AIPAC, and she maxed to your last campaign. Jerome has given to you as well. Ask them to attend the DSCC reception next Tuesday at the end of the AiPAC Policy Conference and tally $5000 to your campaign.

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	$0.00
1994	$0.00
1993	$0.00
1992	$0.00
1991	$0.00
1990	$0.00
1989	$0.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

CLUB INFORMATION:

RT A Feb 1, 1995 Jerome and Harriet have individual donor records, but requested to receive mail at this address in this form.

ALL ADDRESSES:
4 Via Los Incas, Palm Beach, FL 33480

ALL PHONES:
(407)832-1512 (Business)

- Call Results -

9704380486 4

EXHIBIT 9

O'BRIEN • CALIO

LAWRENCE F. O'BRIEN, III

June 21, 1996

The Honorable Carl Levin
United States Senate
459 Russell Senate Office Building
Washington, D.C 20510

Re: DSCC Tally - Levin

Dear Carl:

I was delighted to see you at the Archive's salute to Mark Hatfield on June 11 and to have a chance to chat briefly. The event was a well justified tribute a fine public servant.

In a brief aside at the end of the dinner, I mentioned that I am a participant in the DSCC Majority Trust program and perhaps could be of some help via that mechanism. By letter dated June 20, 1996, a Majority Trust "tally" to the Levin campaign in the amount of $1,500.00 has been made.

Best of luck in your campaign.

Sincerely,

/s/ LOB III

Lawrence F. O'Brien III

9704380486 5

EXHIBIT 10

O'BRIEN • CALIO

LAWRENCE F. O'BRIEN III

August 5, 1996

The Honorable Carl Levin
Friends of Carl Levin
236 Massachusetts Avenue, NE. #202
Washington, DC 20002

Dear Senator Levin:

I am in receipt of your letter, dated August 2, 1996.

By letter dated June 20, 1996, a DSCC "tally" in the amount of $1,500.00 was made to your campaign. A file copy of my letter to you informing you of that is enclosed, just in case there was any confusion.

I enjoyed being with you at David Pryor's breakfast and wish you every success in your campaign.

Sincerely,

Lawrence F. O'Brien, III

Enclosure

1350 EYE STREET, N.W. • SUITE 660 • WASHINGTON, D.C. 20005

TELEPHONE (202) 898-1736 FAX (202) 682-1730

9704380486 6

EXHIBIT 11

Larry J. Hochberg

1400 South Wolf Road · Suite 200
Wheeling, Illinois 60090-6524

June 25, 1996

The Honorable Bob Kerrey
Democratic Senatorial Campaign Committee
430 South Capitol Street, S.E.
Washington, D.C. 20003

Dear Bob:

Enclosed is my $5,000 contribution to the Democratic Senatorial Campaign Committee. I would like this contribution tallied to these campaigns as follows:

Senator Carl Levin	$2000
Congressman Dick Durbin	1000
Senate Campaign	
Senator Tom Harkin	1000
Senator John Kerry	1000

Should you have any questions, please call me at 847-520-0100.

Best of luck for a successful election season.

Best regards,

Larry

Larry J. Hochberg

LJH:js

enclosure

cc: The Honorable Carl Levin
The Honorable Dick Durbin
The Honorable Tom Harkin
The Honorable John Kerrey

97043804867

National Committee to
Preserve Social Security
and Medicare

EXHIBIT 12

April 4, 1996

Ms. Melissa Maxfield
Director, Leadership Circle
Democratic Senatorial Campaign Committee
430 South Capitol Street, SE
Washington, DC 20003

Dear Ms. Maxfield:

The National Committee to Preserve Social Security & Medicare recently renewed its membership in the DSCC's Leadership Circle.

Please apply $2,000 of that contribution to Senator Carl Levin's Tally Sheet.

Feel free to give me a call should you have any questions or need additional information.

Sincerely,

Max Richtman

Max Richtman
Executive Vice President

CC: The Honorable Carl Levin

9704380486 3

2000 K Street, N.W., Suite 800 • Washington, D.C. 20006 • 202-822-9459

EXHIBIT 14

Merv and Thea Adelson
Bill and Barbara Belzberg
Barbra Streisand

Cordially invite you to attend a fundraiser in honor of

Senator Carl Levin of Michigan

September 16, 1996
6:00 P.M. to 8:00 P.M.

at the home of

Bill and Barbara Belzberg
811 North Alpine Drive
Beverly Hills, California

R.S.V.P. to Tina Stoll
(202) 544-8963

Suggested Donation:
$500 or $1,000

Paid for by Friends of Senator Carl Levin. Produced in-house.

9 7 0 4 3 8 0 4 8 6 9

Senator Carl Levin

Carl Levin has earned a reputation as one of the Senate's most determined and effective legislators. One Michigan paper noted that "regardless of whether one agrees with his philosophy, United States Senator Carl Levin is a breath of fresh air." Former Texas Governor Ann Richards said recently, " If Carl isn't careful, he'r going to give politics a good name."

Carl was the driving force between the first successful lobbying reform bill in fifty years. Carl has also been a star performer in protecting a woman's right to choose, fighting against race and gender discrimination, working to protect the wall of separation between church and state, and defending arts funding from the cheap and politically easy attacks of the radical right.

As the senior Jewish member of the Senate, Carl feels a special responsibility to protect the unique relationship between the U.S. and Israel. As a ranking member on the Armed Services Committee, he's worked to fulfill that responsibility. He has consistently fought to extend foreign aid to Israel, helped promote joint U.S.-Israeli development of weapon systems, worked tirelessly on behalf of the Soviet and Ethiopian Jewish communities, and helped pass legislation to move the U.S. Embassy from Tel Aviv to Jerusalem.

Carl has a stellar record on issues crucial to the entertainment industry. From standing up to China to protect American intellectual property; to fighting for strong anti-piracy language in our international trade agreements; to working *with* rather than fighting *against* the industry on the V-chip, Carl has proven his commitment on issues that count.

Carl is one of the GOP's top targets this year. Carl's opponent, Ronna Romney, is a conservative radio talk-show host. She won a bitter primary with the help of well-organized and well-funded single issue groups like the Michigan Right-to-Life and the NRA. Soon she will be utilizing the money and grassroots operations of the same special interests to attack Carl. It's clear that Carl's opponents are willing to spend *whatever it takes* to defeat him.

We need to keep Senators like Carl Levin. Please give him your maximum support.

EXHIBIT 15

Friends of Senator Carl Levin

236 Massachusetts Avenue, NE, Suite 202
Washington, DC 20002
Phone: (202) 544-8963 Fax: (202) 546-2321

FAX COVER SHEET

TO: Robert Nathan

FROM: Matthew Erickson

PAGES INCLUDING
COVER SHEET: 3

COMMENTS: Please find attached the assorted documents regarding the DSCC's tally system. Individuals are permitted to tally up to $20,000 per year.

For some reason, it is very important that you not put Senator Levin's name on the check itself. The letter alone is sufficient to insure that the contribution is tallied to Senator Levin.

Thanks for your help. We'll see you on the 16th.

Paid for by Friends of Senator Carl Levin

9704380487C

Senator Carl Levin

August 29, 1996

Mr. Robert Nathan
fax (818) 842-8321

Dear Mr. Nathan:

Thank you again for your generous support. I know that Senator Levin appreciates your enthusiasm for the cause.

As we discussed, you can make out a check to the Democratic Senatorial Campaign Committee and tally it to Senator Levin.

The DSCC maintains a record (a "tally") of how much money each candidate helps to raise for the Committee. The amount of money to be spent by the DSCC on behalf of the party nominee is based on the nominee's tally record and, among other factors, the nominee's likelihood of winning and need for DSCC funds. However, the DSCC does not accept contributions earmarked for a specific candidate; contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

I have enclosed a letter to the DSCC for you to sign (or copy) and return with your check.

Please do not hesitate to contact me at (202) 544-8963 if you have any questions about the Levin campaign. Thank you very much for your generous support.

Sincerely,

Matthew Erickson
Deputy National Fundraiser

Paid for by Friends of Senator Carl Levin.
230 Massachusetts Avenue, N.E., Suite 202, Washington, DC 20002 (202) 544-8963, Fax (202) 546-2321
Contributions are not deductible for Federal income tax purposes

9/0438048871

Liz Silva
Democratic Senatorial Campaign Committee
430 South Capitol Street
Washington, DC 20003

Dear Ms. Silva:

Please find enclosed a check for _____ to the DSCC. I understand the tally system as it has been explained to me, and would like the check tallied towards Senator Carl Levin.

Sincerely,

Robert Nathan

9704380487 2

EXHIBIT 16

LA Guest List

Donna Arnold
Hope Boonschaft
Hal and Carole Gaba
Martin Hamburger (sent $500)
Stan and Marilyn Harris
*Maurice Kraines (sent 500) → was there
*Shirley Kraut (sent $1000 -- not coming)
*Norman Lear
Martin Lutin (sent $100 -- not coming)
*Mr. and Mrs. Frank Mancuso (sent $1000)
Alfred Mann
Robert Nathan (at personal max -- bringing DSCC tally) — was there
Ann O'Connor
Harriet Ratner (sent $150)
Fred Richman
Stan Ross (sent $500)
Brad Ruderman
*Corky and Mike Stoller
someone from WINPAC

* = '90 Contributor

Matt
Please figure out w/ Tricia who we need to follow up with

9704380487 3

EXHIBIT 17

Democratic Senatorial Campaign Committee
430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447
Internet: info@dscc.org

J. Robert Kerrey, NE
Chairman

Program Chairs

Rest Majority Trust
John Breaux, LA

Women's Council
Barbara Mikulski, MD
Barbara Boxer, CA

Leadership Circle
Jeff Bingaman, NM

Labor Council
Russ Feingold, WI

DSCC Roundtable
David Pryor, AR
Carol Moseley-Braun, IL
Patty Murray, WA

9704380487 4

Fact Sheet on the 1995 DSCC Annual Senate Dinner
"The Trail to Victory Begins in Oregon"

Honorary Chairman:	Senator Robert C. Byrd
Chairman, DSCC:	Senator Bob Kerrey
Dinner Co-Chairs:	Senator Tom Daschle, Senator Wendell Ford, Senator Barbara Mikulski, Senator John Kerry, Senator Harry Reid, Senator Jay Rockefeller, Senator Byron Dorgan and Senator John Breaux
Date:	Wednesday, November 1, 1995
Time:	Reception 6:00 p.m. Dinner 7:30 p.m.
Place:	Sheraton Washington Hotel 2660 Woodley Road at Connecticut Avenue, N.W. Washington, DC
Attire:	Business Attire
Ticket Price:	$1,500 individual $15,000 table
Proceeds:	Democratic Senatorial Campaign Committee to benefit 1996 U.S. Senate Candidates, including Democratic nominee in Oregon special election.
Annual Contribution Limits:	An individual may contribute a maximum of $20,000 to the DSCC which counts against the $25,000 annual federal limit. A PAC may contribute up to $15,000.
Tally Credit:	Contributions to the 1995 Fall Dinner may be tallied to any Democratic U.S. Senator or any 1996 nominee for the U.S. Senate
DSCC Contacts:	Lisa Cowell (202) 485-3110 Jonathan Grossman (202) 485-3112 Melissa Maxfield (202) 485-3138

Paid for and authorized by the Democratic Senatorial Campaign Committee

COLUMBIA

9-24

$ 74,961 DSCC to date PAID FOR

WIS - TV

DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE

Does not include Florence or [redacted] for affiliates.

9/19 - 9/23
$7,084 29 spots
9/23 - 9/29
$12,099 62 spots
$(19,183)

ELLIOTT CLOSE CAMPAIGN
10/26 - 11/3 on two separate schedules
$16,294 50 spots
$15,576 60 spots
$ 3,417 15 spots - (11-4)

WOLO - TV

DSCC
9/19 - 9/23
$1,140 14 spots
9/24 - 9/30
$2,040 26 spots
$ 3040

ECC
10/21 - 11/5 on two separate schedules
$5,520 80 spots
$910 8 spots

WLTX - TV

DSCC
9/24 - 9/29
$5,530 37 spots

DSCC = 27,753

ECC
10/21 - 11/5
$13,715 92 spots

9704380487 5

CHARLESTON

WCSC - TV 5 (CBS)

DSCC
9/19 - 9/23
$4,130 23 spots
9/24 - 9/29
$6,490 50 spots

ECC
10/21 - 11/4
$13,770 128 spots

WCBD - TV 2 (NBC)

DSCC
9/19 - 9/23
$2,310 16 spots

ECC
10/21 - 11/5
$11,350 109 spots

WCIV - TV 4 (ABC)

9/19 - 9/23
$914 16 spots DSCC
9/23 - 9/29
$1,944 38 spots
10/21 - 11/5
$7,401 93 spot ECC

DSCC 15,788

*The WCIV ad representative showed John Dimitri copies of two different cancelled checks. One check was dated 9/3/96 and was from the Elliott Close for Senate campaign for $6,405. The other check, dated 9/18/96 and from the DSCC, totaled $3,046.

9704380487 6

GREENVILLE

WYFF - TV 4

DSCC
9/25 - 9/29
$17,985

ECC
10/21 - 11/5
$37,349

WSPA - TV 7

DSCC
9/24 - 9/29
$12,935

ECC
10/21 - 11/3
$33,485

30,920 DSCC

9704380487 7

EXHIBIT 19

Durbin Targets Salvi Over Tobacco Cash In Convention Speech
Eds: Moved for Friday AM cycle.
By DENNIS CONRAD
Associated Press Writer

CHICAGO (AP) - Dick Durbin, for more than a decade Congress' leading tobacco lobby foe, took his moment on the Democratic National Convention's center stage to use the issue against his GOP rival in Illinois' Senate race.

Given the opportunity by President Clinton's convention handlers, the Springfield congressman on Thursday addressed the national cable audience before the president delivered his acceptance speech.

Although his election opponent, state Rep. Al Salvi, R-Mundelein, was not mentioned by name, Durbin was direct enough in his attack.

"I know there is a political price to pay for challenging the tobacco giants," he shouted in a hoarse voice weary from convention events. "My Senate opponent has received more tobacco contributions than any new Senate candidate in America. But make no mistake - I am proud to be the number one political target of the tobacco lobby."

Campaign reports filed this year with the Federal Election Commission show Salvi has received $14,000 from tobacco interests, Durbin aides said.

The Salvi campaign did not challenge Durbin's figures. Instead, it suggested that Durbin was hypocritical on the issue by having accepted $17,500 this year from the Democratic Senatorial Campaign Committee, which it said took in at least $40,000 from tobacco interests in the past two years.

"The only way the Democratic Senatorial Campaign Committee money goes to me is if I raise the money and it is tallied to me," Durbin responded, adding he gets no money from tobacco interests.

Durbin's speech was another sign of the Democrats' efforts to portray themselves as more caring than Republicans about children and more concerned about the unhealthy influence of tobacco on politics and health.

Vice President Al Gore on Wednesday emotionally recalled before the convention how his sister began her smoking habit at 13 only to die of cancer in her 40s.

For Durbin, his personal story was about his father who died of lung cancer nearly 37 years ago after being a two-pack a day cigarette smoker.

"He never lived to see me graduate from high school or college, get married, present him with a grandchild or take the oath of office as a congressman," Durbin said.

Salvi spokesman Dan Patlak said the GOP candidate has a strong record in the General Assembly of supporting laws that seek to keep tobacco from children, including a ban on all cigarette vending machines.

As to his differences with his Democratic opponent, Salvi "believes it's the choice of adults whether or not they smoke," he said. "It shouldn't be outlawed by the government.'

In his speech, Durbin, who helped push through the ban on smoking on airlines nine years ago, said he was proud Clinton was the first president with the courage to join him in fighting tobacco use among kids.

"I will be prouder still when the day comes, and it will, when this party is tobacco free and the health of our children is more

portant than any special interest group," he said.

Not all delegates were sure Durbin's attacks were wise.

"The problem you get is a backlash, and the people who probably smoke the most are the Democrats," state Sen. Denny Jacobs of East Moline said while holding a cigar in a hotel lobby.

(PROFILE
(CAT:Business;)
(CAT:Medical;)
(CAT:Political;)
(SRC:AP; ST:IL;)
)

[al&salvi]

9704380487 9

EXHIBIT 20

EXCERPT FROM 9/25/96 INTERVIEW WITH VICTOR MORALES:

QUESTION: "How much money have you raised?"

ANSWER: "Totally, how much have we raised? I think over half a million. About $600,000."

QUESTION: "And how much have you got now ready to spend?"

ANSWER: "I think we have about a little over $200, almost $300,000. And then there's some tally money of about $150,000. Tally money that, you know, people have tallied in my name to the DSCC. So we've talked to a few people in the T.V. commercial making business to see what kind of prices and so we've talked to about 3 and we'll talk to a couple more. So we haven't given up hope on being on T.V."

9704380488C

EXHIBIT 21

LEVEL 1 - 25 OF 90 STORIES

Copyright 1996 Denver Publishing Company

Rocky Mountain News
January 10, 1996, Wednesday
SECTION: EDITORIAL; Ed. F; Pg. 38A
LENGTH: 734 words

HEADLINE: Democrats told: To get, first give

BYLINE: Peter Blake; Rocky Mountain News Staff Writer

BODY:

It smacks of that scam where the hustler goes up to the little old lady at the bank to tell her he's willing to share the $ 1 million he just found in the street, but first she has to put up $ 10,000 to prove her good faith.

But since it's being run by the Democratic Senatorial Campaign Committee, it's got to be legit, right?

Rocky Mountain News, January 10, 1996

The DSCC is holding its winter retreat at Aspen this weekend for its ''Majority Trust'' - all those fat cats who've given at least $ 20,000 to the party.

There will receptions, dinners, discussions, a brunch and, of course, time for skiing. There to spill inside information to the high rollers will be Sens. Howell Heflin of Alabama (picture him on skis!), Joe Biden of Delaware, Tom Harkin of Iowa and Byron Dorgan of North Dakota.

Also invited are Colorado's five Democratic Senate candidates.

''As you know, the DSCC is allowed to allocate $ 325,000 to the Colorado Senate race,'' says the letter signed by DSCC chairman Bob Kerrey of Nebraska.

That's the bait. Now comes the switch: ''I am asking you as well as the other Colorado Senate candidates to commit to raising $ 10,000 toward this weekend,'' Kerry adds. The funds are ''crucial'' if the DSCC is to fully fund Democratic Senate nominees.

He also reminds the candidate and his donors that the money raised for the DSCC can be earmarked right back to the candidate. Presuming, of course, he or she wins the primary.

Rocky Mountain News, January 10, 1996

It's one way of getting around the $ 2,000-per-contributor limit. Ain't soft money grand!

Are Colorado's candidates falling for this hustle? Yes and no.

* Lawyer Tom Strickland said he'd ''drop by'' since he'll be campaigning in the area anyway. As for bringing $ 10,000, he may not have it by Friday but ''we're going to try and do our part along the way.''

* State Sen. Paul Weissmann is going to Washington this weekend for a cousin's bat mitzvah. ''But I don't know if I'd go anyway,'' he said. ''I don't understand the rationale.'' Besides, ''why is it every time politicians go to Aspen they think they have to raise money?''

* Law dean Gene Nichol said he wasn't going. ''We're running a campaign that's concentrating hard on questions of political reform,'' he said, ''so it doesn't seem to me like the kind of thing I should do.''

* City Councilwoman Ramona Martinez told the DSCC she doesn't have $ 10,000 but plans to attend anyway. ''I sort of chuckled and said, 'You've gotta be kidding.' I understand what they're trying to do . . . but the folks I know just don't have that kind of money.'' She's looking forward to rubbing elbows with

Rocky Mountain News, January 10, 1996

the rich. ''I've never been to this kind of event in my entire life,'' she said.

* Populist businessman Phil Perington will attend, but only to stick a

9704380488 1

figurative thumb in their eye. ''It's such an exclusive, elitist thing,'' he said. ''No wonder the party's lost the faith of the people . . . They expect people to volunteer and do all the grunt work, and they never get to meet their leaders . . . What I see happening is the big-money candidates going up there to meet the big-soft-money givers.''

Colorado Democratic chairman Mike Beatty predicted non-payers like Martinez would be welcomed anyway. ''What are they going to do, turn her away at the door?'' he asked.

The weekend gives candidates ''an opportunity to differentiate themselves, '' he said. Some people react adversely to such an event, ''others are going to be able to go in there and raise money. No question that's part of the process.''

LANGUAGE: English

LOAD-DATE: January 12, 1996

9704380482

EXHIBIT 22

Democratic Senatorial Campaign Committee
430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447
Internet: info@dscc.org

J. Robert Kerrey, NE
Chairman

President Elect

West Majority Trust
John Breaux, LA

Women's Council
Barbara Mikulski, MD
Barbara Boxer, CA

Leadership Circle
Kent Conrad, ND

Labor Council
Russ Feingold, WI

DSCC Boundless
David Pryor, AR
Carol Moseley-Braun, IL
Patty Murray, WA

August 7, 1996

Mr. Mark Warner
Mark Warner for Senate
2120 Staples Mill Rd., Suite 11
Richmond, VA 23230

Dear Mark,

Thanks to the combination of strong incumbents and our talented class of challengers, Democrats are poised to re-gain the majority in the U.S. Senate. With hard work, and the money needed to even the playing field with the perennially well-funded opposition, we will take back the Senate in November.

As Chairman of the DSCC, I am dedicated to ensuring our candidates have the resources needed to wage a successful campaign. However, as you know all too well, we can't spend money on Senate campaigns, if we don't raise it first.

To that end, we will be hosting our Annual Senate Issues Conference and Dinner in Washington on Thursday, September 26. President Bill Clinton will be our honored guest at dinner. As you know, this is always an important event on the DSCC calendar, with many of our most loyal friends and supporters coming in from around the country. **I hope you will make every effort to join us, and you will take this opportunity to raise DSCC money for your tally.**

To date, you have raised $97,250.00 against your overall tally of $636,442.00. Since the Annual Senate Dinner will be one of the final major fundraising events on the DSCC's calendar, it will provide a terrific opportunity for all Senate candidates to raise significant tally money. I have enclosed detailed information on this full day of activities here in the nation's capital. We are also planning DSCC events with the President in Florida, Los Angeles and New York that will provide additional opportunities to raise tally money.

In addition, I hope this dinner will give you a chance to meet our major donors from across the country who will in turn be supportive of your campaign's fundraising efforts.

Should you have any questions regarding the DSCC's Annual Issues Conference and Dinner, or to discuss fundraising plans, please feel free to contact Lisa Cowell at (202) 224-2447.

Sincerely,

Bob Kerrey

cc: Anita Rimler

Paid for and authorized by the Democratic Senatorial Campaign Committee
Contributions are not tax deductible.

9704380488 3

Democratic Senatorial Campaign Committee
430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447
Internet: info@dscc.org

J. Robert Kerrey, NE
Chairman

Program Chair

West Majority Team
John Breaux, LA

Women's Council
Barbara Mikulski, MD
Barbara Boxer, CA

Leadership Circle
Kent Conrad, ND

Labor Council
Russ Feingold, WI

DSCC Roundtable
David Pryor, AR
Carol Moseley-Braun, IL
Patty Murray, WA

Fact Sheet on the DSCC's "Annual Senate Issues Conference and Dinner"

Date:	Thursday, September 26, 1996
Schedule:	**DSCC's Issues Conference and Luncheon** 8:30 am - 1:30 pm Washington Court Hotel Legislative update and political discussion with Democratic Senators and political pundits **White House Briefing** (pending confirmation) 2:00 pm - 4:00 pm
Evening:	**DSCC Annual Senate Dinner**
Time:	6:30 - 7:30 pm reception 7:30 - 9:30 pm dinner
Location:	Hyatt Regency Washington on Capitol Hill 400 New Jersey Avenue, NW
Dinner Chairs:	Senator Edward M. Kennedy Senator Joseph I. Lieberman
Attendees:	Senator Tom Daschle, Democratic Leader and the Democratic Members of the U.S. Senate
Special Guest:	President Bill Clinton
Honorees:	Senator Bill Bradley, Senator Jim Exon, Senator Howell Heflin, Senator J. Bennett Johnston, Senator Sam Nunn, Senator Claiborne Pell, Senator David Pryor, Senator Paul Simon
Attire:	Business Attire
Ticket Price:	$5,000 personal or PAC (Issues Conference and Lunch, White House Briefing and Annual Senate Dinner) $2,000 personal or PAC (Annual Senate Dinner Only)
For More Information:	Contact Lisa Cowell or Amy Edwards at the DSCC at (202) 224-2447

Updated August 7, 1996

Paid for and authorized by the Democratic Senatorial Campaign Committee
Contributions are not tax deductible.

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EXHIBIT 23

TRANSPORTATION POLITICAL EDUCATION LEAGUE

January 31, 1996

Democratic Senatorial Campaign Committee
Leadership Circle
430 South Capitol Street, S.E.
Washington, D.C. 20003

Dear Sir or Madam:

Please tally the attached check (Check No. 1322) in the amount of $14,250.00 from the Transportation Political Education League to Senator Paul Wellstone.

Sincerely,

James Brunkenhoefer

Enclosure

9704380488 5

EXHIBIT 24

Wellstone for Senate

236 Massachusetts Avenue, N.E.•Suite 202•Washington, D.C. 20002•(202) 544-8963

FAX COVER SHEET

TO: Jim Brunkenhoefer

FROM: Peter Sherman

PAGES INCLUDING FAX COVER SHEET: 2

COMMENTS: Sorry for bothering you about this. My concern is that without something from UTU the DSCC will hold-up crediting your check to Paul.

My fax number is (202) 546-2321.

Thanks for your help.

9704380488 6

EXHIBIT 25

WELLSTONE FOR SENATE

236 MASSACHUSETTS AVENUE, N.E. • SUITE 202 • WASHINGTON, DC 20002 • (202) 544.8963 • FAX (202) 546.2321

February 3, 1995

Mr. Henry Everett
150 East 69th Street
New York, New York 10021

Dear Henry:

It was good talking to you the other day. I am grateful for your willingness to consider supporting my re-election efforts.

The Republicans are calling me their top target for the 1996 elections so unfortunately I need to start my campaign early. In the several years since I have been a senator, I have only accepted campaign contributions up to $100 per person. Needless to say, I have no funds to speak of. I am also starting from scratch with the DSCC, so anything you can tally would be a tremendous help. Your early support means a great deal to me.

I am enclosing some information about me for your review. I am also enclosing a pledge card and a self addressed envelope for your convenience. Please feel free to stop by and visit the next time you are in Washington.

Sincerely,

Paul D. Wellstone

9704380487

Contributions are not tax deductible as charitable contributions for federal income tax purposes.
Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of $200 in a calendar year.

PAID FOR BY WELLSTONE FOR SENATE, RICK KAHN, TREASURER

EXHIBIT 26

Mr. Chuck Loveless "Chuck"
American Federation of State, County &
Municipal Employees
1625 L Street, NW, Fourth Floor
Washington, DC 20036
(202)429-5020 (B)

PAC Contributor; Status is Active

Wellstone call (03/28/95 - young)
Please ask Chuck to contribute $15K to the DSCC this month and tally at least a portion to your campaign.

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	$1,000.00
1994	$15,000.00
1993	$15,000.00
1992	$15,000.00
1991	$15,000.00
1990	$15,000.00
1989	$15,000.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

Mar 27, 1995 $1,000.00 LC St. Patrick's Day Breakfast

CLUB INFORMATION:

ALL ADDRESSES:
1625 L Street, NW, Fourth Floor, Washington, DC 20036

ALL PHONES:
(202)223-3413 (Aux. Fax)
(202)429-1185 (Business)
(202)429-1197 (Fax)
(202)429-5020 (Business)
(202)429-1100 (Business)

- Call Results -

9704380488

03/28/95 11:34 AM

Ms. Elizabeth Birch "Elizabeth"
Executive Director
Human Rights Campaign Fund
1101 14th Street NW, Suite 200
Washington, DC 20005
(202)628-4160 (B)

PAC Contributor; Status is Active

Wellstone call (03/28/95 - young)
Please call Elizabeth and ask her to give $15K to the DSCC and tally at least a portion to your campaign.

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	$0.00
1994	$10,000.00
1993	$15,000.00
1992	$2,000.00
1991	$5,000.00
1990	$5,000.00
1989	$0.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

CLUB INFORMATION:

ALL ADDRESSES:
1101 14th Street, NW, 2nd Floor, Washington, DC 20005
1101 14th Street NW, Suite 200, Washington, DC 20005

ALL PHONES:
(202)628-4160 (Business)
(202)347-5323 (Fax)

You had lunch with her

9704380488 9

- Call Results -

Mr. Daniel Lucas "Dan" /Eleanor
Political Director
Service Employees International Union
1313 L Street, N.W.
Washington, DC 20005
(202)898-3200 (B)

PAC Contributor; Status is Active

Wellstone call (03/28/95 - young)
Please ask Dan To contribute $15K to the DSCC this month and tally at least a portion to your campaign.

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	$0.00
1994	$15,000.00
1993	$15,000.00
1992	$15,000.00
1991	$15,000.00
1990	$15,000.00
1989	$15,000.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

CLUB INFORMATION:

ALL ADDRESSES:
1313 L Street, N.W., Washington, DC 20005

ALL PHONES:
(202)898-3352 (Business)
(202)898-3304 (Fax)
(202)898-3200 (Business)
(202)898-3217 (Business)

9704380489C

- Call Results -

FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 10, 1996

John D. Heubusch, Executive Director
National Republican Senatorial Committee
425 Second Street, NE
Washington, DC 20002

RE: MUR 4502

Dear Mr. Heubusch:

This letter acknowledges receipt on October 8, 1996, of the complaint you filed 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 4502. 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

97043804891

FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 10, 1996

Paul Johnson, Treasurer
Democratic Senatorial Campaign Committee
430 South Capitol Street, SE
Washington, DC 20003

RE: MUR 4502

Dear Mr. Johnson:

The Federal Election Commission received a complaint which indicates that the Democratic Senatorial Campaign Committee ("DSCC") 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 4502. 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 DSCC 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.

9704380489 2

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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

9704380489 3

FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 10, 1996

William R. Docking, Treasurer
Docking for US Senate
125 S. Crestway
Wichita, KS 67218

RE: MUR 4502

Dear Mr. Docking:

The Federal Election Commission received a complaint which indicates that Docking for US Senate ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4502. Please refer to this number in all future correspondence.

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

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

97043048894

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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

9704380489 5

FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 10, 1996

Jill Ann Sadowsky Docking
125 S. Crestway
Wichita, KS 67218

RE: MUR 4502

Dear Ms. Docking:

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 4502. 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.

9704380489 6

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

Sincerely,

Colleen T. Sealander, Attorney
Central Enforcement Docket

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

9704380489 7

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. · WASHINGTON, D.C. 20005-2011
TELEPHONE: 202 628-6600 · FACSIMILE: 202 434-1690

October 22, 1996

Via Facsimile

Alva E. Smith, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Oct 22 5 27 PM '96

Re: MUR 4502

Dear Ms. Smith:

I am writing on behalf of Docking for U.S. Senate and Thomas R. Docking, as treasurer to request an extension of time in which to respond to the allegations contained in MUR 4502. Attached for your files is a copy of an executed Statement of Designation of Counsel for respondent.

Because respondent received a copy of this complaint on October 11, 1996, a response would normally be due on October 26, 1996. In light of the close proximity to the pending election, as well as the complex legal and factual allegations raised in the complaint, respondents request an extension until Wednesday, December 4, 1996. Although this extension is several days longer than typically agreed to by the General Counsel's office, respondents wish to point out that the Thanksgiving holiday falls during this period. Because of the difficulty in coordinating with the numerous respondents during both the election and the Thanksgiving holidays, respondents believe that this extension request is appropriate. You should be aware that the complaint in MUR 4502 is identical to MUR 4490, and they should be treated the same for scheduling purposes.

Please do not hesitate to contact me directly at 202/434-1625 if you require anything further regarding this request.

Very truly yours,

Marc E. Elias

MEE:dml
Attachment

[04605-0002/DA962960.048]

97043804898

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4490

Name of Counsel: Robert F. Bauer, Marc E. Elias

Firm: Perkins Coie

Address: 607 14th Street, NW
Washington, DC 20005

Telephone: (202) 628-6600

Fax: (202) 434-1690

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

10/16/96
Date

Jill Docking for U.S. Senate, by
Thomas R. Docking, counsel
Signature

Respondent's Name: Jill Ann Sedowsky Docking

Address: 125 South Crestway
Wichita, KS 67218

Telephone: Home 316-683-6075
Business 316-263-3080

9704380489 9

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 29, 1996

Marc E. Elias, Esquire
Perkins Coie
607 Fourteenth Street, N.W.
Washington, D.C. 20005-1690

RE: MUR 4502
Jill Ann Sadowsky Docking

Docking for U.S. Senate and
Thomas R. Docking, as treasurer

Dear Mr. Elias:

This is in response to your letter dated October 22, 1996, which we received on that day, requesting an extension until December 4, 1996, to respond to the complaint in the above-referenced matter. In a telephone conversation with staff from this Office on October 28, 1996, you revised your request to an extension until November 27, 1996. After considering the circumstances presented in your letter, the Office of the General has granted the requested extension. Accordingly, your response is due by the close of business on November 27, 1996.

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

Sincerely,

Alva Smith, Paralegal
Central Enforcement Docket

9704380490C

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. · WASHINGTON, D.C. 20005-2011
TELEPHONE: 202 628-6600 · FACSIMILE: 202 434-1690

November 1, 1996

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Nov 1 1 08 PM '96

Via Facsimile

Alva E. Smith, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4502

Dear Ms. Smith:

I am writing on behalf of the Democratic Senatorial Campaign Committee and Paul Johnson, as treasurer, to request an extension of time in which to respond to the allegations contained in MUR 4502. A copy of an executed Statement of Designation of Counsel for the DSCC is attached.

In light of the proximity to the pending election, as well as the complex legal allegations raised in the complaint, respondent requests an extension until Wednesday, November 27, 1996. This is the same date that the other respondent's response is due in this matter.

Please do not hesitate to contact me directly at 202/434-1625 if you require anything further regarding this request.

Very truly yours,

Marc E. Elias

MEE:dml
Attachment

[04005-0064/DA963050.049]

9704380490 1

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4502

Name of Counsel: Robert F. Bauer, Marc E. Elias

Firm: Perkins Coie

Address: 607 14th Street, NW
Washington, DC 20005

Telephone: (202) 628-6600

Fax: (202) 434-1690

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

10/31/96
Date

Paul Johnson
Signature

Respondent's Name: Paul Johnson

Address: 430 S. Capitol St SE
Washington DC 20003

Telephone. Home 703-683-2586

Business 202-485-3108

Fax

9704380490 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 6, 1996

Marc E. Elias, Esquire
Perkins Coie
607 Fourteenth Street, N.W.
Washington, D.C. 20005-1690

RE: MUR 4502
Democratic Senatorial Campaign
Committee and Paul Johnson, as treasurer

Dear Mr. Elias:

This is in response to your letter dated November 1, 1996, which we received on that day, requesting an extension until November 27, 1996, to respond to the complaint in the above-referenced matter. Although your request is made after the due date of your response, after considering the circumstances presented in your letter, the Office of the General has granted the requested extension. Accordingly, your response is due by the close of business on November 27, 1996.

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

Sincerely,

Alva Smith, Paralegal
Central Enforcement Docket

9704380903

RECEIVED
FEDERAL ELECTION
COMMISSION MAIL ROOM
NOV 27 4 48 PM '96

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF:

DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE, et al.

Respondents.

MUR 4490
MUR 4502 (Consolidated)

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL COUNSEL
NOV 29 10 23 AM '96

RESPONDENTS' MOTION TO DISMISS

9704380490 4

Robert F. Bauer
Marc E. Elias
PERKINS COIE
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011
(202) 628-6600

Attorneys for Respondents

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Friends of Senator Carl Levin 16

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97043804905

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF: DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE, et al. Respondents.	MUR 4490 MUR 4502 (Consolidated)

RESPONDENTS' MOTION TO DISMISS

Democratic Senatorial Campaign Committee ("DSCC"), Friends of Max Baucus, Roger H. Bedford for U.S. Senate, Beshear for U.S. Senate Committee, Jim Boren for U.S. Senate Committee, Brennan for U.S. Senate, Tom Bruggere for U.S. Senate, Committee to Elect Winston Bryant for U.S. Senate, Friends of Max Cleland for U.S. Senate, Elliott S. Close for U.S. Senate, Docking for U.S. Senate,[1] Friend of Dick Durbin Committee, Harvey Gantt for Senate Committee, Houston Gordon for Senate/Friends of Houston Gordon, Tim Johnson for South Dakota, Inc., Karpan for Wyoming, Kerry Committee, Mary Landrieu for Senate Committee, Inc., Friends of Senator Carl Levin, Minnick for Senate, Victor Morales for Senate Campaign Committee, Nebraskans for Nelson, Reed Committee, Friends of Tom Strickland, Inc., Swett for Senate, Sally Thompson for U.S. Senate, Torricelli for U.S. Senate, Inc., Wellstone for Senate, Maryanne Hanson Alix, Mandell and Madelaine Berman, Maurice Cohn, Sadie Cohen, Linda Dresner, Dorothy Gerson, Irwin Green, Doreen Hermelin, Robert Larson, David and Miriam

[1] Because MUR 4502, in which the Docking campaign is named, is identical in all respects to MUR 4490, Respondents move to consolidate them. For the sake of convenience, Respondents have filed one joint Response and Motion.

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Mondry, Richard and Susan Rogel, Joel Tauber, and Timothy Wuliger, hereby move the Federal Election Commission ("FEC" or the "Commission") to dismiss the above captioned MUR.[2]

INTRODUCTION

Before the Commission is a complaint filed by the National Republican Senatorial Committee ("NRSC") against the DSCC, Democratic Senate candidate committees (and their treasurers) and contributors for their participation in the DSCC "tally program." The tally program is a means by which Democratic Senate candidates help raise money to fund DSCC's programs and activities. As part of this program, the DSCC keeps a record or "tally" of the amount of money a particular candidate has helped raise for the DSCC. That "tally" is then used, along with other factors, to determine the amount of support Senate candidates receive from the DSCC.

For several years the NRSC has been concerned about the tally program because it serves as an effective way to utilize the DSCC's best fundraisers -- its candidates -- to raise money. As it has in the past, the NRSC has now filed a complaint in an effort to halt the tally program. The NRSC's 41-page complaint deliberately misstates facts, mischaracterizes evidence, and misconstrues the law. It purposefully distorts the Commission's past findings with respect to the tally program and attempts to create a suggestion of unlawfulness around the program. The NRSC has also added a new twist to MUR 4490 -- rather than simply naming the DSCC and the participating candidate campaigns, the NRSC named "John and Jane Doe" tally contributors as well. Unable to prevail on a level playing field, the NRSC has now moved to attempt to intimidate the Democratic Party's candidates and contributors. The Commission should not tolerate this abuse of the complaint process. Specifically, the NRSC has purposefully employed terms such as "scheme," "illegal," and "conspiracy," hoping to scare contributors into believing

---

[2] This response and motion is also made on behalf of the respective treasurers of the Committees listed above.

9704380749907

that they face serious civil, or even criminal, exposure for having contributed money to the DSCC. The FEC must move swiftly to dismiss this complaint lest it encourage similar tactics in the future.

MUR 4490 should also be dismissed because it threatens to undermine FEC's conciliation process. Following the 1994 election cycle, the DSCC and Commission negotiated an agreement that was intended to clarify the lawful limits of the tally program. For the DSCC's part, it voluntarily agreed to certain requirements to make sure that candidates and contributors understood the tally program. In exchange, the DSCC, and all tally participants received clear cut rules about what is and is not lawful. Having abided by the MUR 3620 conciliation agreement, the DSCC feels strongly that without conclusive evidence of a violation of these rules -- which wasn't provided by the NRSC and does not exist -- it and its candidates and contributors should not be subjected to the agency's investigative process again. If this matter is not promptly dismissed, the Commission will be sending a clear message to the DSCC and other future Respondents that reaching agreement with the FEC offers no protection against harassing complaints in the future. As a result, settling large scale complaints will be much more difficult.

ARGUMENT

I. The Tally Program Has Operated Lawfully and in Accordance with the Terms of MUR 3620

For several election cycles the DSCC has asked Democratic Senate candidates to assist it in soliciting funds for its activities and operations. Under the "tally" program, DSCC contributors have the option to credit -- or "tally" -- their contributions to the DSCC in the name of a particular candidate, thereby expressing support for that candidate or crediting the candidate with the raising of the contribution for the DSCC's programs and activities. The amount that a candidate has tallied is one of many factors the DSCC then uses to determine what amount, if any, of coordinated expenditures to make on behalf of a candidate's campaign pursuant to 2 U.S.C. § 441a(d). Other factors may include the candidate's need for the money, the closeness of the race, and an assessment that the coordinated expenditures would be significant in helping the candidate's campaign.

9704380490 8

Concerned with the growing success of the tally program, in the last several election cycles the NRSC has filed complaints with the FEC charging that the tally program violates the earmarking provisions of the Federal Election Campaign Act ("FECA" or the "Act"). For example, on September 24, 1992, the NRSC filed a complaint with the FEC charging DSCC and several of its candidates with having violated the Act. In August, 1995, after investigation and negotiation, the DSCC and FEC agreed to a conciliation agreement settling the charges contained in MUR 3620. (A copy of the MUR 3620 conciliation agreement is attached at Tab A.) No contributors were charged with having violated the law in connection with MUR 3620, and all of the participating candidate campaigns that were initially named in the complaint were dismissed from the complaint by the FEC.

The MUR 3620 conciliation agreement set forth specific criteria for establishing the legality of the 1996 DSCC tally program. Among other things, the MUR 3620 conciliation agreement:

- acknowledged that the FECA permits the DSCC to ask its candidates to assist it in soliciting funds for the Committee. Agreement at § IV, ¶ 11.
- recognized that while tally contributions are used to fund coordinated expenditures, 2 U.S.C. § 441a(d), they are also used to fund "other DSCC activities on behalf of its candidates." Id. at ¶ 12.
- further recognized that "tallying is not earmarking, but rather is a means of expressing support for that candidate or crediting the candidate with the raising of the contribution for the DSCC's 'coordinated expenditure' program and other activities." Id. at ¶ 13.
- stated that "[i]t was the DSCC's stated policy and practice to inform contributors that the DSCC did not accept earmarked contributions, that the amount of tallied contributions was a significant factor that the DSCC took into account in citing the amount of 441a(d) expenditures to be made on behalf of a particular candidate, and that the DSCC retained final discretion regarding the use of any tallied contribution." Id. at ¶ 16.

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The conciliation agreement clearly contemplated that the DSCC would continue in the future to operate its tally program.[3] To do so, however, the DSCC agreed to abide by certain steps required by the conciliation agreement. First, the DSCC agreed that any contribution that appeared earmarked on its face would be returned to the contributor. Second, on an ongoing basis, the DSCC agreed to provide education and training to its staff and the staff of its participating campaigns regarding the tally program. That training has emphasized that the DSCC does not accept earmarked contributions, that tallied contributions are spent on all DSCC activities and programs as the DSCC determines within its sole discretion, and that campaigns must advise potential DSCC contributors about these facts. Third, the DSCC has utilized certain standard language that the DSCC and FEC agreed it would use in its tally solicitations. Specifically, the DSCC includes the following "disclaimer" in all of its solicitation for tallied contributions as well as its standard description of the tally program:

> The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

Finally, the DSCC has implemented a reasonable procedure to review DSCC and candidate fundraising solicitations for the tally program to ensure that they do not inadvertently solicit earmarked contributions.

The DSCC's tally program was modified early in the 1996 election cycle to conform with the requirements of the MUR 3620 conciliation agreement. For example, under the terms of the conciliation agreement, the DSCC agreed to refund any contributions that appeared to be earmarked to a particular candidate. In fact the DSCC went further than required by the agreement. Rather than depositing such contributions and then later refunding them to the

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[3] Contrary to the NRSC's suggestion, the conciliation agreement clearly contemplates DSCC's continued use of the tally program. See, e.g., Agreement § IV, ¶ 12 ("DSCC has utilized and utilizes a 'tally' program") (emphasis added); Id. at § V, ¶ 2(c) ("DSCC will utilize standard language in its solicitation pertaining to the tally program") (emphasis added).

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contributor, the DSCC initiated a policy that no contribution that bore indicia of earmarking would be accepted or deposited by the DSCC. Under this new, stricter policy, for example, any check that includes a memo line note bearing the name of the candidate is returned, uncashed, unless under the circumstances it is clear that the contributor understands the tally program and does not intend the contribution to be earmarked.

This new policy was explained to all DSCC fundraising staff and Democratic Senate candidates both orally and in writing. For example, at the beginning of the "tally" cycle, in April 1996, DSCC counsel drafted and circulated memoranda to both DSCC and candidate fundraising staff that clearly and plainly spelled out the requirements of the tally program. (Copies of the memoranda distributed to DSCC and candidate staff are attached at Tabs B and C, respectively.) These memoranda were distributed to all DSCC and candidate fundraisers. Among other things, the memo to DSCC staff stated:

> Any contribution that is received by the DSCC that appears to be earmarked to a particular candidate must be returned. In past cycles, those contributions were deposited and a form letter was sent to the contributor. This is no longer acceptable. Any check that bears the name of a candidate, including a memo line note such as "tally to _____" or "for _____" must be returned unless it is accompanied by a properly worded letter or response card, signed by the contributor, that indicates that the donor understands the tally program[]. The returned check may be accompanied by a proper solicitation for a new contribution.

(DSCC Memo at 1 (emphasis in original).)

The memorandum sent to 1996 Democratic Senate candidates stated the same point slightly differently:

> Tally is not an earmarking program; indeed, the DSCC does not accept earmarked contributions. Therefore, any contribution that is received by the DSCC that appears to be earmarked to a particular candidate will be returned. Any check that bears the name of a candidate, including a memo line note such as "tally to _____" or "for _____" would be returned unless it is accompanied by a signed and properly worded letter or response card that indicates that the donor understands the tally program[]. The returned check may be accompanied by a proper solicitation for a new contribution.

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(Candidate Memo at 1 (emphasis in original).)

Under this new policy, the DSCC and its candidates have returned numerous checks to contributors. Even checks that otherwise do not appear earmarked are returned if they include the name of a candidate on the face of the check. While such steps are not required by the conciliation agreement, they represent the DSCC's best efforts to ensure that no earmarked contributions are accepted by the DSCC. To demonstrate the DSCC's commitment to this requirement of the conciliation agreement, we have attached, for your review, three examples of letters that the DSCC has sent to contributors returning their checks.[4] (Attached at Tabs D, E and F.) In each instance, the check was returned for nothing more than having a candidate's name in the memo line. In each of these instances the DSCC clearly explained its policy of not accepting earmarked contributions. For example, the letter dated February 8, 1996 states, "in order to avoid any misperception concerning the intent of your contribution, I am returning your check." The letter also makes clear that if the contributor wishes to give money to the campaign of the candidate in question, he should do so directly. There is no question that DSCC's policy of returning contributions more than meets its obligations under the conciliation agreement.

The DSCC has also met its requirement to provide training to DSCC staff and candidate campaigns. On several occasions DSCC's outside counsel have conducted in person seminars and conference calls with DSCC staff and Senate campaign staff regarding the requirements of the tally program. In addition, DSCC's outside counsel regularly consults with the DSCC's fundraising and conference staff as well as candidate fundraisers to answer any questions that may arise regarding the tally program. Finally, as noted above, the DSCC has distributed memoranda from its outside counsel setting forth, in clear plain language, the requirements of the tally program. (See Tabs B and C.) Among other things explained in those memoranda, fundraising staff are told that "[w]e must tell our candidates and contributors that the DSCC does not accept

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[4] Because the Commission has followed the NRSC lead and treated tally contributors as potential Respondents, DSCC has redacted this letter, as well as all others that identify a particular contributor who is not already named in MUR 4490.

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earmarked contributions and that tallied contributions are spent for DSCC activities and programs as the Committee determines within its sole discretion." (DSCC Memo at 1.) The DSCC regularly incorporates specific language that instructs its contributors that tallied contributions are spent for DSCC activities and programs as the DSCC determines within its sole discretion in all of its solicitations. Furthermore, as set forth below, DSCC staff make efforts to see that fundraising solicitations sent by individual Senate campaigns incorporate the same language as used by the DSCC.

In addition, the DSCC regularly distributes to contributors who are uncertain about the nature of the tally program a standard written explanation of the program. (Attached at Tab G.) Among other things, this explanation states:

> DSCC funds are allocated to targeted Democratic Senate candidates by the Allocation Committee of the DSCC. This committee sets the DSCC allocation policies at its discretion. In allocating funds to candidates, many factors are considered by the DSCC's Senate Allocation Committee such as need, winability, latest polling figures, finances on hand and the amount of funds tallied to the DSCC for that specific candidate. The DSCC maintains a record (a "Tally") of how much money each candidate helps to raise for the Committee. The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent to DSCC activities and programs as the Committee determines within its sole discretion.

(Id. (emphasis in original).)

Also in the conciliation agreement, the parties agreed that, in order to assure that there was no confusion on the part of contributors in the future, the DSCC would include certain language in its written tally solicitations. Consistent with this requirement, DSCC fundraising staff were explicitly instructed that:

> All tally solicitations by the DSCC, its candidates and agents must include the following language:
>
> The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the committee determines within its sole discretion.

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(DSCC Memo at 2 (emphasis in original).)

The same "standard language" was provided to Senate campaigns in a memorandum addressed to them. (Candidate Memo at 2.) For example, the invitation attached by the NRSC as an example of the DSCC's noncompliance proves the DSCC's adherence to the conciliation agreement. Exhibit 5 to the NRSC's motion is an invitation to a "Take Back the Senate Dinner." Clearly included in that invitation package is the following text, as its own paragraph:

> The DSCC maintains a record (a "Tally") of how much money each candidate helps raise for the Committee. The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

This "tally disclaimer" is set out as its own paragraph, in the same size type and typeface, directly above the other disclaimers required by federal law. This invitation, selected by the NRSC for its "incriminatory" affect, is not unusual. All DSCC invitations from this election cycle contain the required disclaimer language. (See examples attached at Tabs H, I, J and K.) In all instances, the required tally explanation appears in the same size font and in the same location as other important and pertinent information.

Finally, the conciliation agreement in MUR 3620 required the DSCC to implement "reasonable procedures" to review its own fundraising solicitations as well as its the fundraising solicitations of its Democratic Senate candidates. As with the other requirements, DSCC's legal counsel circulated a memorandum to all DSCC fundraising staff as well as all campaign fundraising staff that specifically states that "the DSCC should review tally fundraising solicitations, when possible, to make sure they comply with the requirements [of the conciliation agreement]." (DSCC Memo at 2 (emphasis in original).)

The fact that the DSCC has reviewed its own solicitations is evidenced by the inclusion of the standard language in all DSCC-initiated solicitations. The DSCC has also made significant efforts to review campaign tally solicitations to ensure that they, too, abide by the agreement's requirements, and the candidates have complied. Attached is one recent example of a fax cover sheet, marked-up invitation, and tally solicitation for candidate Dick Durbin's campaign.

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(Attached at Tab L.) The Commission will note, among other things, that the DSCC employee reviewing this solicitation stated: "If you want to add the 'tally' option - you must also include the language attached - (see *) in place noted." The language that the DSCC employee had indicated must be included in the solicitation is marked in the document and reads as follows:

> The DSCC does not accept contributions earmarked for a particular candidate. The DSCC maintains a record ('tally') of how much money each candidate helps raise for the Committee. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

The Commission should also note that the DSCC employee concludes her note to the campaign by instructing the campaign to fax a revised version of the invitation back to the DSCC so that it could be reviewed by the DSCC's counsel for compliance with the tally conciliation agreement. This type of careful review of candidate solicitations is the DSCC's standard policy. Furthermore, as indicated by the facsimile cover sheet, it is also DSCC's policy for all such solicitations to be reviewed by counsel if there is any question as to whether or not the solicitation comports with the requirements of the conciliation agreement.

II. The NRSC's Complaint Mischaracterizes the Tally Program as an Earmarking Program

It is clear from the gross factual and legal errors contained in the NRSC's complaint that its primary intention is to harass the DSCC, Democratic candidate committees (and their treasurers) and contributors. For example, on pages 2-3 of the complaint -- literally the first two sentences of the complaint -- the NRSC states that "[t]he DSCC and its Democratic Senate candidates are conspiring to raise illegal and excessive earmarked contributions to fund their races this fall . . . [and] have used the tally program as a vehicle to circumvent federal election laws governing earmarked and excessive contributions." Both the NRSC and Commission know that these statements are false.

For example, the FEC knows from MUR 3620 that the tally program is not an earmarking program. In fact, the conciliation agreement in MUR 3620 stated plainly that "[i]t was the DSCC's stated policy and practice to inform contributors that the DSCC did not accept earmarked

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contributions." Agreement at § IV, ¶ 16. In fact, the DSCC has previously supplied the Commission with a detailed statistical analysis of the 1992 and 1994 tally programs conducted by a nationally recognized Professor of Political Science at Duke University. (The DSCC Tally Program: Recycling or Electioneering?, William T. Bianco, May 22, 1995 (attached at Tab M). In his report, Professor Bianco asks:

> In making allocations to candidates, does the DSCC focus on the amount of tallied receipts collected by a candidate for the party, or the candidates who tallied more receiving larger allocations (the recycling hypothesis)? Or does the DSCC's allocation strategy reflect a wider range of factors, consistent with the goal of allocating funds so as to preserve the party's incumbent base and elect as many challengers as possible (the electioneering hypothesis)? That is, are DSCC allocations driven by the goal of recycling tally funds, or by the goal of electing candidates to office?

Bianco at 1. After conducting a statistical analysis of the tally program's operation in 1992 and 1994, Professor Bianco concludes:

> [A]nalyses of 1992 and 1994 tally and allocation data, with appropriate controls for factors such as the electoral process of different candidates, their ability to raise funds, and the variable cost of campaigning in different states, indicate that the recycling hypothesis is an insufficient explanation of the DSCC's allocation strategy. Rather, consistent with the electioneering hypothesis, DSCC allocations are strongly influenced by political variables, such as the closeness of a race and the cost of campaigning.

Bianco at 1 (emphasis added). Thus, Professor Bianco found that the DSCC's tally program is not an earmarking program (what he calls the "recycling hypothesis"). Rather, the DSCC's pattern of allocating funds demonstrates conclusively that the monies it receives are spent to support its political goals of electing candidates to office rather than simply "recycling" the money back to the candidate to whom it was tallied.

Nowhere in the MUR 3620 conciliation agreement, or in any other DSCC document from the 1996 election cycle or before, is it suggested that the DSCC will use tallied funds solely for the coordinated expenditures on behalf of the candidates to whom the funds are tallied. In fact, as noted above, the NRSC's contention that the tally program is simply a means by which contributors can earmark their contributions to particular candidates is completely undermined by

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Professor Bianco's statistical analysis of the DSCC tally program as it operated in 1992 and 1994. In his conclusion, Professor Bianco states: "The DSCC's allocation of funds collected through the tally program appears to reflect a political strategy, one directed at preserving the Party's incumbents running for reelection and electing as many of the Party challengers to office." Bianco at 7.

Professor Bianco's analysis is consistent with the data from the 1996 tally program. A preliminary review indicates wide disparities between the amount a particular candidate tallied, and the amount his or her campaign received in section 441a(d) expenditures. For example, several Senate candidates tallied all, or nearly all of their targeted amount and received the benefit of no section 441a(d) expenditures at all.[5] Other candidates' campaigns received the benefit of several times the amount of section 441a(d) expenditures that they had tallied to the DSCC. In sum, the data do not corroborate the NRSC's allegation of earmarking.

The NRSC is similarly incorrect when it asserts that the DSCC had "promised the Commission that it would discontinue its illegal tally program activities," and calls the DSCC's use of the stipulated disclaimer language "cosmetic," "over-lawyered," and "legalese." First, nothing in the agreement suggests that the tally program is "illegal" or that it should be discontinued. To the contrary, the agreement assumes the continuation of the tally program, and contains specific steps that the DSCC agreed to undertake in order to ensure that the tally program is conducted lawfully in the future. Second, the "cosmetic," "over-lawyered," and "legalese" disclaimer language complained of by the NRSC is contained in the conciliation agreement negotiated and signed by the General Counsel of the FEC on behalf of the Commission.

Finally, in its complaint the NRSC overlooks the fact that the changes the DSCC made to the tally program after MUR 3620 have had a notable affect on contributor understanding. As noted above, checks that bear an indicia of earmarking are returned to contributors with an

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[5] The following campaigns were the beneficiaries of no section 441a(d) expenditures by the DSCC: Obermeyer, Biden, Hunt, Trajillo, Johnson, Warner, and Rockefeller.

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explanation that the DSCC does not accept earmarked contributions as well as a fuller explanation of what the tally program is. (See Tabs D, E and F.) Contributors are then given an opportunity to make a new contribution to the DSCC. If they do, they must indicate in some form that they understand the tally program as it has been explained to them. Enclosed for the Commission's consideration are several of the letters received by the DSCC that indicate a clear understanding of the tally program. (Attached at Tabs N, O, P, Q, R, S, T.) For example:

- In a September 27 transmittal letter tallying $15,000 a contributor states "I am enclosing some tally sheet requests, which, of course, I understand are subject to the discretion of the Democratic Senatorial Campaign Committee." (Tab R.)

- A September 12, 1996 transmittal letter to the DSCC asking that a $20,000 contribution to the DSCC be tallied to Senator Barbara Boxer states explicitly that the contributor understands the DSCC tally program as it has been explained to them in the following way:

> Tally is not an earmarking program, and the DSCC does not accept earmarked contributions. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

(Tab Q.)

- A similar letter dated June 24, 1996 accompanied a $19,000 contribution to the DSCC that was tallied in the name of Bob Torricelli. (Tab P.) That letter also stated explicitly that the contributor understood that "the DSCC does not accept contributions earmarked for a particular candidate." Id. The contributor further stated that he understood that "[c]ontributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion." (Id.)

In sum, these examples clearly demonstrate that the DSCC's contributor base understands the tally program because the DSCC and its candidates have made an effort to educate them as to what the tally program is, and as importantly, what it is not. Unlike the NRSC, DSCC contributors understand that the tally program is not earmarking.

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III. The Candidates and Contributors Named in MUR 4490 Acted Properly

The NRSC's complaint goes to great lengths to suggest that each and every Democratic Senate campaign and certain contributors violated the Act simply by participating in the tally program. Indeed, for the vast majority of the candidate campaigns the NRSC alleges nothing more than that they "knowingly participat[ed] in the tally program and solicit[ed] funds for [their] DSCC 'tally.'" Yet such allegations, standing alone, hardly provide the Commission with "reason to believe" a violation of the Act has occurred. Indeed, Respondents are at a loss about how to respond because the NRSC has failed to even state a violation of the Act. In fact, MUR 3620 makes it clear that participation in the tally program alone is not unlawful. Consequently, these allegations are not only utterly baseless, they represent a transparent attempt to engage in wholesale harassment of the Democratic senatorial campaign process that should not be sanctioned by this Commission.

For the few remaining candidates, the NRSC has attempted to misconstrue documents and statements by the candidate so that it would appear that the campaigns were doing something improper. When examined carefully, however, the NRSC's "evidence" against these few campaigns turns out to be a chimera. Accordingly, the NRSC's complaint against such campaigns should be dismissed as well. This is plainly evidence from a brief examination of the facts related to each campaign.

Elliot S. Close for U.S. Senate

Beyond the boiler-plate allegations that the Close campaign violated the law by participating in the tally program, the NRSC alleges that it, and its contributors, violated the law because several members of the candidate's family contributed money to the DSCC around the same time that the DSCC made coordinated expenditures in behalf of the Close campaign. The NRSC's allegations are clearly without merit.

First, in order for there to be a violation of the Act for earmarking there needs to be an intent on the part of the contributor to earmark the contribution. In this instance, the NRSC has

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failed to provide any evidence -- direct or circumstantial -- that rebuts the logical inference that the contributions in question were for the DSCC, to be used in its sole discretion.

Second, the NRSC places great weight on the fact that the $70,000 in contributions to the DSCC were made within a few days of $74,000 of coordinated expenditures. However, the NRSC's choice of figures is highly misleading. The fact is that the DSCC made over $332,000 in section 441a(d) expenditures on behalf of the Close campaign and gave the campaign an additional $17,500 pursuant to section 441a(h). All, or nearly all, of that money was spent/contributed in the final months of the election. The NRSC attempted to mislead the Commission by taking one expenditure out of the context of the $350,000 that was spent on behalf of the Close campaign.

Finally, it should not be surprising to the NRSC or the Commission that a candidate's friends and family also contribute money to the DSCC. Indeed, it would be surprising if a Senate candidate's strongest supporters did not also support the candidate's party. Friends and family, like all contributors, have a right to contribute to the DSCC and that right cannot be confiscated by the government on the basis that the Party also supports the candidate. A candidate's friends and family will often share his political beliefs and will understand the importance of supporting the DSCC as well as the candidate. Even where a candidate's family is less "political," it will often understand that supporting the candidate's political party ultimately benefits all candidates, including their own.

Friends of Dick Durbin Committee

The NRSC presents two unrelated pieces of "evidence" to support its allegation that the Durbin campaign violated the law by soliciting excessive earmarked contributions. First, the NRSC quotes out of context a statement made by then-Congressman Durbin about his reluctance to accept money from tobacco interests. It is clear from the entire text of the article that Durbin's intent in making the quoted statement was to indicate that he neither solicits money for his own campaign from tobacco interests nor benefits from such money indirectly by soliciting it for the

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DSCC. When viewed in this context it is clear that Durbin did not intend to suggest that the money he raised for the tally program was earmarked.

More importantly, there is no evidence provided by the NRSC that any of the money Durbin raised for the DSCC was intended by any contributor to be earmarked. In fact, the documentary evidence attached (See Tab L) demonstrates the Durbin campaign's understanding of, and strict adherence to, the rules. Specifically, the documents show that the Durbin campaign sought guidance and approval from DSCC staff regarding the requirements for soliciting tally contributions. The record further demonstrates that, as a result, the Durbin campaign included the proper disclaimer language in its solicitation.

It is against this documented record of compliance that the NRSC offers a single, out of context, statement by the candidate. It would be a disservice to the Commission, Respondents, and the process, if an entity like the NRSC can file a politically motivated complaint on the basis of such "evidence" and, in the face of objective proof of compliance, the Commission proceeded to find reason to believe.[6]

Kerry Committee

The sole specific allegation against the Kerry campaign also relates to a June 25, 1996 letter from a DSCC contributor, tallying his contribution to certain campaigns. As noted above, it is unclear why the NRSC believed that this letter indicates a violation of the law.

Friends of Senator Carl Levin

It is clear from reading the complaint that its primary target is the Levin campaign and contributors that tallied to it. Having had its personnel sort through campaign trash, the NRSC touts its Levin tally documents as the "key" to "exposing" the "conspiracy." Rather than providing a basis for a complaint, however, these documents provide a boring picture of fundraising in Senate campaigns. For example the NRSC points to two draft tally solicitation

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[6] Symptomatic of its desperation, and the weakness of its allegations, is the fact that the NRSC also points to a June 25, 1996 letter from a DSCC contributor to the DSCC regarding how the contributor wished his contribution to be tallied. The sum of $1,000 of that contribution was tallied to Durbin's campaign. However, the NRSC does not explain how this letter could possibly indicate a violation of law.

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letters (NRSC Exs. 6-7) as evidence of a violation. The truth is more mundane. Even assuming that these two letters were, in fact, sent to potential contributors, it is clear from their content that they do not constitute a violation of the Act. The fact is that there is nothing in either of these letters that suggests that Senator Levin or his campaign impermissibly solicited earmarked contributions. The NRSC's complaint acknowledges begrudgingly that both letters include specific statements that the amount of money tallied to the Senator is only one of several factors, including the likelihood of winning and need for DSCC funds that the DSCC considers when making 441a(d) allocations. This is the precise sentiment embodied in the "standard language" contained in the agreement. Contrary to the suggestion by the NRSC, there is nothing improper with Senator Levin or his campaign asking potential contributors to tally their contributions to him.

Next, the NRSC cites as a violation of the Act an April 17, 1995 DSCC call sheet asking Senator Levin to call potential contributors for contributions. This allegation is even weaker than the last. In the MUR 3620 conciliation agreement the FEC specifically acknowledged that "[t]he Federal Election Campaign Act of 1971, as amended, does not prohibit party committees from referring to and promoting party candidates in soliciting funds for the committee and candidates may assist party committees in soliciting funds for the committee." (Agreement at § IV, ¶ 11 (emphasis added).) That is precisely what the DSCC asked Senator Levin to do. He was asked to solicit certain donors for contributions to the DSCC. He was also told, correctly, that these contributors could be asked to tally their contributions to Senator Levin. Nothing in these documents suggests any intent to solicit earmarked contributions. Furthermore, nothing in these documents suggests a violation of the agreement.

The NRSC also attempts to frame a violation from four innocuous letters from contributors who wrote the DSCC to state their intention to tally all or part of their contribution to the Levin campaign. Contrary to the NRSC's suggestion, none of these letters make any mention of earmarking contributions to the Levin campaign, or even suggest an intent to earmark

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the contributions. To the contrary, all four of the letters clearly state their intention to tally their contributions to Levin.

Finally, while the NRSC appears surprised that the DSCC "keeps a specific, detailed accounting" of tallied contributions, such reports come as no surprise to the Commission because similar tally reports were provided during the course of the MUR 3620 investigation. In fact, the DSCC's standard description of the tally program states specifically that "[t]he DSCC maintains a record (a "Tally") of how much money each candidate helps raise for the Committee." (Tab G.)

Similarly, it is not surprising that many of the individuals who made contributions to the DSCC also made contributions to Senator Levin's campaign. It is a fact that the DSCC asks candidates to solicit contributions to the DSCC from individuals who otherwise have a good relationship with the candidate. Such behavior is not only protected by the First Amendment, but is specifically approved of in the conciliation agreement. (See Agreement § IV, ¶ 11.) It would be ridiculous to suppose that the DSCC would have asked Senator Levin to solicit individuals with whom he is unfamiliar. There is nothing in the Constitution, FECA or Commission regulations that offers any support to the NRSC's position. In fact, such a position would seriously impair Respondents' First Amendment rights to freedom of speech and association.

Finally, the NRSC recounts the chronology of a September fundraising event at which a contributor -- who had already contributed to the Levin campaign -- tallied his DSCC contribution to the Levin campaign. Specifically the NRSC seems concerned about the fact that the contributor was told not to put the candidate's name on the check. As discussed above, this prohibition is the result of the DSCC efforts to assure that there is absolutely no misunderstanding about the nature of tallied contributions. Although not required by the MUR 3620 conciliation agreement, the DSCC imposed this requirement upon itself to eliminate the potential for donor confusion. In fact, the DSCC has provided examples of contributions that were returned to contributors for nothing more than having the name of a candidate on the face of the check.

Of greater significance than the DSCC's own internal rules, is the fact that -- pursuant to MUR 3620 -- the tally solicitation letter contains the following:

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> The DSCC maintains a record (a "tally") of how much money each candidate helps raise for the Committee. The amount of money to be spent by the DSCC on behalf of the party nominee is based on the nominee's tally record and, among other factors, the nominee's likelihood of winning and the need for DSCC funds. However, the DSCC does not accept contributions earmarked for a specific candidate; contributions tallied to a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

Furthermore, in order to assure no confusion on the part of the contributor, he was asked to sign a letter to the DSCC stating that he understands the tally program. Far from incriminating the DSCC and Levin campaign, this transaction demonstrates precisely how the tally system is designed to operate under the MUR 3620 conciliation agreement.

In sum, the documents the NRSC argue establish a clear violation only serve to support the legality of the tally program and the propriety of the Levin campaign's actions. Unfortunately in its desperation to stop tally, the NRSC targeted contributors for harassment. The Commission can minimize its impact by promptly dismissing this Complaint.

Victor Morales For Senate Campaign Committee

With respect to the Morales campaign, the NRSC provides a badly recorded audio cassette that it claims is the voice of the candidate. On the tape, according to the NRSC, Morales is heard stating that his campaign had between $200,000 and $300,000 and that "there's some tally money of about $150,000." Once again, the NRSC has failed to explain how this "evidence" suggests a violation of the Act. Even assuming, arguendo, that Morales intended what the NRSC suggests -- that the tally money would go to him -- it still does not establish that contributors were in any way confused about the contributions they gave to the DSCC. Nor does or can it establish that the DSCC treated that money as "earmarked." In fact, Morales received approximately $380,000 in section 441a(d) support -- twice the $150,000 he apparently states he raised in tally.

Friends of Tom Strickland, Inc.

The NRSC next points to a January 10, 1996 Rocky Mountain News editorial that purports to summarize a letter from DSCC Chairman Bob Kerrey to five potential Democratic

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candidates, including Strickland. Without providing a copy of that letter or quoting it directly, the Rocky Mountain News editorial "summarizes" it as reminding candidates and contributors "that the money raised for the DSCC can be earmarked right back to the candidates." That characterization of Senator Kerrey's letter is simply inaccurate. In fact, the DSCC letter from Senator Kerrey states explicitly that "[t] money you raise now and throughout 1996 will enable us to fully fund Colorado and our other competitive Senate races around the country." (A copy of the letter is attached at Tab U (emphasis added).) Later in the letter Senator Kerry states that the tallied funds raised "are crucial if the DSCC is to reach its goal of fully funding our Democratic nominees." (Id. (emphasis added).) Senator Kerrey's letter is accurate, consistent with the MUR 3620 conciliation agreement, and completely lawful.

Torricelli For U.S. Senate, Inc.

When originally filed, the NRSC's complaint made no specific allegation about the Torricelli campaign. On October 22, however, the NRSC amended its complaint with a transcript of Torricelli talking about campaign resources. Once again the NRSC has taken out of context an innocent statement regarding the tally program. Torricelli was asked whether he anticipated that the "Democratic Political Committee" would give him money. In response, Torricelli was obviously attempting to draw a distinction between the DSCC's and NRSC's fundraising ability. According to Torricelli, while the NRSC is able to raise enough money to fund section 441a(d) activities by itself, the DSCC requires that its candidates help raise the money it uses to fund section 441a(d) expenditures. The "extraordinary deal" remark clearly refers to the fact that Democratic candidates have to be far more involved in Party fundraising than Republicans.

This is another example of how the NRSC took an isolated statement by a candidate out of context and yet ignored completely the fact that there is no evidence that any contributors were misled or did not fully understand the tally program. Indeed, as with the Durbin campaign, the objective documentary evidence contradicts the NRSC's suggestion of unlawfulness. For example, Respondents have included a letter dated June 24, 1996 from a DSCC contributor who tallied a contribution in Torricelli's name. In the letter, the contributor clearly states that his or her

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contribution is not earmarked and that he or she expects that it will be used by the DSCC as the DSCC sees fit. (See Tab P.)

Finally, as the Commission knows, there is absolutely no evidence that the funds raised by Torricelli for the DSCC were actually treated by the DSCC as earmarked to his campaign. In fact, they were not. Thus, since no contributor was confused, and the funds were not actually treated as earmarked, there cannot be any violation of the Act.

Friends of Mark Warner

The allegations made with respect to the Warner campaign, perhaps better than any others, illustrate the NRSC's desperation to halt the tally program. The NRSC alleges that the Warner campaign and the DSCC violated the law because DSCC Chairman Bob Kerrey sent a letter to Warner telling him about an upcoming DSCC fundraising event. Not only does this letter not violate the law, but the Warner campaign did not actually receive <u>any</u> section 441a(d) support from the DSCC. Thus, whatever money Warner was able to help the DSCC raise absolutely did not benefit Warner via section 441a(d) expenditures.

Wellstone for Senate

Finally, the NRSC relies on three sets of documents to demonstrate that Senator Wellstone violated the Act. Once again, the NRSC's efforts are in vein. First, the NRSC provides copies of a Wellstone campaign fax cover sheet on which a campaign worker expresses concern that without a letter of intent from the donor, the DSCC might not tally the contribution. Far from being incriminatory, the Wellstone fax cover sheet provides concrete proof of the DSCC's and Wellstone campaign's vigilance in assuring that contributors were not confused when they made tallied contributions.

Since the DSCC entered into the MUR 3620 conciliation agreement, it has been DSCC policy to require some indicia from a contributor, when possible, that indicates that they understand that their contribution to the DSCC is tallied -- rather than earmarked -- to a candidate. Consistent with that policy, the Wellstone campaign properly asked a DSCC contributor to state in writing that his intent was to tally his contribution to Senator Wellstone.

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Not only is such action appropriate, it exemplifies the proper tally procedure to prevent contributor confusion.

Next, the NRSC points to a fundraising solicitation in which Wellstone tells a potential supporter that "anything you can tally would be a tremendous help." Not only is that statement not improper, it is demonstrably true. The fact is that all Democratic candidates are aided when they persuade their supporters to contribute to the DSCC. As the saying goes "a rising tide lifts all boats." So too, the more money candidates raise for the DSCC, the more money there is to fund all DSCC activities, including section 441a(d) coordinated expenditures. Furthermore, a candidate's ability to raise money for the party is an early sign that the campaign is serious and therefore likely deserving of party support. Finally, it is ironic that after dismissing DSCC's disclaimer as "cosmetic" elsewhere, it complains that no disclaimer language was included in this letter. The reason for that, of course, is obvious: The MUR 3620 agreement containing the disclaimer language was not signed until August 1995 -- months after this letter was sent out.

Lastly, the NRSC complains about March 28, 1996 call sheets. Once again the NRSC fails to explain why it believes it improper for Democratic Senate candidates to make telephone calls to help raise money for the Party. In fact, as noted earlier, the FEC has specifically acknowledged that "[t]he Federal Election Campaign Act of 1971, as amended, does not prohibit party committees from referring to and promoting party candidates in soliciting funds for the committee and candidates may assist party committees in soliciting funds for the committee." (Agreement at § IV, ¶ 11 (emphasis added).) Interestingly, each of the contributors Wellstone was asked to call had been contributors to the DSCC prior to Wellstone's election to the Senate. These contributors were, in every sense of the phrase, DSCC contributors. That they may have also contributed to Wellstone's campaign cannot all of a sudden disqualify them from giving to the DSCC as well.

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CONCLUSION

In sum, it is not surprising that in the wake of a tight election the NRSC chose to file an obviously politically motivated complaint such as this. However, that election is now concluded and it would be unfair for Respondents to have to suffer any further burden as a result of the NRSC's political efforts. The fact is that in framing this complaint the NRSC made no effort to understand the tally program, the record in MUR 3620, or the facts of this matter. As demonstrated above the NRSC took political license to misstate the facts and mischaracterize the law. Whatever political impact the NRSC achieved is now irrelevant. What is important is that the Commission not further the NRSC's abuse of the complaint process by proceeding further.

For the foregoing reasons, MURs 4490 and 4502 should be dismissed.

Respectfully submitted,

Robert F. Bauer
Marc E. Elias
PERKINS COIE
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011
(202) 628-6600

Attorneys for Respondents

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A

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer	)	
Abrams Committee, f/k/a Abrams '92 and Lawrence B. Buttenwieser, as treasurer	)	MUR 3620
Feinstein for Senate '94 and Michael J. Barrett, as treasurer	)	
Sanford for Senate Committee and Alton G. Buck, as treasurer	)	

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Dec 16 11 44 AM '95

CONCILIATION AGREEMENT

This matter was initiated by signed, sworn, and notarized complaints by the National Republican Senatorial Committee and the John Seymour for U.S. Senate Committee. The Federal Election Commission ("Commission") found reason to believe the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, ("DSCC" or "Respondents") violated 2 U.S.C. § 441a(a)(8); 11 C.F.R. § 102.8; 11 C.F.R. § 110.6(b)(2)(iii); and 11 C.F.R. § 110.6(c)(1). The Commission also found reason to believe that the Abrams Committee, f/k/a Abrams '92, and Lawrence B. Buttenwieser, as treasurer; Feinstein for Senate '94, and Michael J. Barrett, as treasurer; and Sanford for Senate Committee, and Alton G. Buck, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2).

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

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

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

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

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

1. The Democratic Senatorial Campaign Committee is a national committee within the meaning of 2 U.S.C. § 431(14).

2. Donald J. Foley is treasurer of the Democratic Senatorial Campaign Committee.

3. A contribution made by a person, either directly or indirectly, on behalf of a particular candidate, which is in any way earmarked or otherwise directed through an intermediary or conduit, shall be treated as a contribution from such person to such candidate. 2 U.S.C. § 441a(a)(8).

4. Earmarked is defined as a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee. 11 C.F.R. § 110.6(b)(1).

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5. A conduit or intermediary means any person (except for a few limited exceptions not applicable to this matter) who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee. 11 C.F.R. § 110.6(b)(2).

6. 11 C.F.R. § 110.6(b)(2)(iii) provides that any person who receives an earmarked contribution shall, among other requirements, forward such earmarked contribution to the candidate or authorized committee in accordance with 11 C.F.R. § 102.8.

7. Section 102.8 provides, inter alia, that earmarked contributions must be forwarded no later than 10 days after receipt.

8. Pursuant to 2 U.S.C. § 441a(a)(8), the intermediary or conduit of an earmarked contribution must report the source of the contribution and the intended recipient to the Federal Election Commission and to the intended recipient. See also, 11 C.F.R. § 110.6(c)(1).

9. Recipient candidates or candidate committees must report earmarked contributions and each conduit or intermediary, who forwards one or more earmarked contributions which in the aggregate exceed $200 in any calendar year in accordance with 11 C.F.R. § 110.6(c)(2).

10. The national committee of a political party may make expenditures in connection with the general election campaign of a candidate for the office of Senator or of a Representative from a state which is entitled to only one Representative that equals the greater of two cents multiplied by the voting age population of the state, or $20,000. 2 U.S.C. § 441a(d); 11 C.F.R. § 110.7(b).

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11. The Federal Election Campaign Act of 1971, as amended, (the "Act") does not prohibit party committees from referring to and promoting party candidates in soliciting funds for the committee and candidates may assist party committees in soliciting funds for the committee.

12. The DSCC has utilized and utilizes a "tally" program as a means of raising funds on behalf of Democratic senate candidates. Tallied funds are used in part to fund coordinated party expenditures pursuant to 2 U.S.C. § 441a(d) as well as other DSCC activities on behalf of its candidates.

13. Under this program a contributor has the option to "tally" a contribution to the DSCC in the name of a particular candidate, thereby expressing support for that candidate or crediting the candidate with the raising of the contribution for the DSCC's "coordinated expenditure" program and other activities.

14. As part of the tally program, the DSCC and the candidate committees produced and distributed fundraising solicitations requesting contributions be sent to the DSCC and indicating that the contributors can tally their contributions to a specific candidate.

15. Some of these solicitations can be fairly read to solicit earmarked contributions and did not contain further clarification and explanation to avoid such a reading; the following examples are illustrative:

a. "For those of you who have already maxed out to my campaign, the DSCC tally is an avenue through which you can offer more support";

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b. "[My] race will be close: the tally sheet will be of vital importance";

c. "As an individual, you can contribute up to $1,000 directly to my committee. Contributions in excess of $1,000 must be made payable to the DSCC and marked for my tally";

d. "You can tally your [DSCC] membership to [__'s] campaign. This means that those dollars will go to [__'s] effort";

e. The response card to a request from a candidate's committee to serve on the host committee for a fundraiser on behalf of the candidate, which provided no explanation of the DSCC's tally program, read as follows:

> Please reserve a space in my name on the invitation as a Benefactor -- enclosed is my check for $5,000 (payable to the "Democratic Senatorial Campaign Committee"' marked for [__'s] tally) or I pledge to raise $5,000. Patron -- enclosed is my check for $2,500 (payable to the "Democratic Senatorial Campaign Committee" marked for [__'s] tally) or I pledge to raise $2,500. Sponsor -- enclosed is my check for $1,000 (payable to "[__] for Senate") or I pledge to raise $1,000;

f. "I must raise an additional $4 million dollars over the next few weeks. . . . I am counting on you to help me pull it off. If you and [__] have any room to make additional federal contributions, I would be grateful if you could tally money to the DSCC for this effort to defeat [my opponent]";

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g. "If you could make a $2,000 contribution to [my committee] and a $10,000 contribution to the DSCC for this effort to defeat [my opponent], it would be one of the building blocks of my campaign";

h. "If you choose to contribute through the DSCC, it is very important that you enclose a letter with your contribution indicating that it is meant for [my tally]. I hope you will consider this as our campaign really needs the support".

16. It was the DSCC's stated policy and practice to inform contributors that the DSCC did not accept earmarked contributions, that the amount of tallied contributions was a significant factor that the DSCC took into account in deciding the amount of 441a(d) expenditures to be made on behalf of a particular candidate, and that the DSCC retained final discretion regarding the use of any tallied contribution. The DSCC acknowledges that this information was not always conveyed to contributors.

17. Some percentage of contributors who responded to these "tally" solicitations earmarked their contributions to the DSCC on behalf of a particular candidate.

18. During the 1992 cycle, the DSCC raised approximately $8,500,000 in tallied funds. During the 1994 cycle, the DSCC raised approximately $11,000,000 in tallied funds. The Commission is not taking the position that all tallied contributions were earmarked, but, without conducting a full investigation, the percentage of contributors who intended that their tallied contributions be earmarked cannot be determined.

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19. The Commission acknowledges that the DSCC may not have intended to solicit earmarked contributions.

20. The tallied contributions that were earmarked for a designated candidate were not treated as earmarked by the DSCC, viz. forwarded to the recipient candidate committees within 10 days, reported as earmarked by the conduit and recipient, and applied to each contributor's limit to the candidate committee's campaign.

V. Because the parties desire an expeditious resolution of this matter, the parties enter into this conciliation agreement prior to the Commission completing its investigation. The parties agree that --

1. The DSCC and certain of its candidates prepared and distributed fundraising solicitations for the DSCC's tally program which can be fairly and reasonably read to mean that contributions would be earmarked for a particular candidate within the meaning of 2 U.S.C. § 441a(a)(8). In response to these solicitations, some contributors earmarked their contributions to the DSCC for a particular candidate.

2. Consistent with its stated policy and practice of not accepting earmarked contributions, the DSCC did not treat such tallied contributions as being earmarked for the designated candidate. When a contribution has been earmarked by a contributor for a particular candidate, a political committee receiving the contribution must follow the requirements of the Act, which the DSCC did not do in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 102.8, 110.6(b)(2)(iii) and

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110.6(c)(1). Some of the funds received by the candidate committees as coordinated party expenditures from the DSCC were earmarked contributions which the DSCC, inter alia, failed to report as earmarked contributions and the candidate committees, in turn, did not report as earmarked contributions, in violation of 11 C.F.R. § 110.6(c)(2).

3. The parties agree that the solicitations could have been clarified to avoid soliciting earmarked contributions by additional DSCC efforts to assure that its staff and the candidate committees had a better understanding of the tally program and communicated this understanding more effectively to donors when soliciting for the DSCC's tally program.

VI. 1. DSCC will pay a civil penalty to the Commission in the amount of seventy-five thousand dollars ($75,000), pursuant to 2 U.S.C. § 437g(a)(5)(A); such penalty to be paid as follows:

a. An initial payment of $25,000 due within 30 days after the effective date of this conciliation agreement.

b. Thereafter, two consecutive monthly installment payments of $25,000 each, due 60 and 90 days after the effective date of this conciliation agreement.

c. In the event that any installment payment is not received by the Commission by the fifth day after it becomes due, the Commission may, at its discretion, accelerate the remaining payments and cause the entire amount to become due upon ten days written notice to the DSCC. Failure by the Commission to

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accelerate the payments with regard to any overdue installment shall not be construed as a waiver of its right to do so with regard to future overdue installments.

2. The DSCC agrees to implement the following remedial steps.

a. For contributions to the DSCC that appear to be earmarked, the DSCC will refund the contributions or forward the contributions to the designated candidate, in accordance with 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 102.8, 110.6(b)(2)(iii), and 110.6(c)(1).

b. On an on-going basis, the DSCC will provide additional education and training to DSCC staff and participants in the tally program, including the staff of Democratic senate candidates, which will emphasize that: (1) DSCC does not accept contributions earmarked for a particular candidate; (2) tallied contributions will be spent for DSCC activities and programs as the Committee determines within its sole discretion; and (3) contributors must be advised of (1) and (2) above when the DSCC and tally program participants solicit tallied contributions.

c. The DSCC will utilize standard language in its solicitations pertaining to the tally program and, as part of its education and training, will instruct its tally participants to include this language in solicitations distributed by such candidates, their committees and their agents. This language will provide, in substance, that the DSCC does not accept contributions earmarked for a particular candidate and that tallied

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contributions will be used as the DSCC determines in its sole discretion. At a minimum, the language will state that:

> The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

d. The DSCC will implement reasonable procedures to review DSCC and Democratic Senate candidate fundraising solicitations pertaining to the tally program to ensure that the solicitations cannot be reasonably read to solicit earmarked contributions, in accordance with the requirements of Section VI(2)(b)-(c) of this agreement.

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

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

IX. Except as provided in Section VI, paragraph (1)(b)-(c), Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

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

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

Date 8-21-95

FOR THE RESPONDENTS:

Robert F. Bauer
Counsel to Democratic
Senatorial Campaign Committee

Date 8-11-95

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B

PERKINS COIE

POLITICAL LAW GROUP

TO: DSCC Fundraising Staff

FROM: Perkins Coie Political Law Group

RE: **Tally Program Compliance**

Last August the DSCC and the FEC entered into a conciliation agreement to settle various complaints against the DSCC's tally program. As a part of that settlement, we exacted significant concessions from the FEC, including an acknowledgment that, properly conducted, the tally program is legal. As for the DSCC, it agreed to implement the following "remedial" steps:

1. **Any contributions that is received by the DSCC that appears to be earmarked to a particular candidate must be returned.** In past cycles those contributions were deposited and a form letter was sent to the contributor. This no longer is acceptable. Any check that bears the name of a candidate, including a memo line note such as "tally to _____" or "for _____" must be returned unless it is accompanied by a properly worded letter or response card, signed by the contributor, that indicates that the donor understands the tally program (see number 3 below for acceptable language). The returned check may be accompanied by a proper solicitation for a new contribution.

2. **We must tell our candidates and contributors that the DSCC does not accept earmarked contributions and that tallied contributions are spent for DSCC activities and programs as the Committee determines within its sole discretion.**

For more information:

Robert F. Bauer	(202) 434-1602	Marc E. Elias	(202) 434-1625
Judith L. Corley	(202) 434-1622	Alicia Alexion (Legal Assistant-Compliance Specialist)	(202) 434-1638
B. Holly Schadler	(202) 434-1634		

24 Hour Pager 1-800-608-3145

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3. All tally solicitations by the DSCC, its candidates and agents must include the following language:

> **The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.**

This language should be included as its own paragraph or a part of another but it must be included in its entirety.

4. **The DSCC should review candidate tally fundraising solicitations, when possible, to make sure they comply with the requirements set forth above.** To make this task easier we will be sending a memorandum to all candidates in the next few days informing them about the tally program.

While some of these requirements require effort and attention, the good news is that if we comply with them the tally program can continue to be a valuable DSCC fundraising program. In the future we will be providing further written and oral guidance regarding the tally program to both the DSCC staff and candidates. In the meantime, if you have any questions please do not hesitate to contact one of us.

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C

PERKINS COIE

POLITICAL LAW GROUP

TO: 1996 Democratic Senate Candidates

FROM: Robert F. Bauer, General Counsel
Democratic Senatorial Campaign Committee

RE: **Tally Program Compliance**

As you know the "tally program" is one of the DSCC's most important and successful fundraising programs. So that you can fully participate in this program, we provide the following guidance:

1. **Tally is not an earmarking program; indeed, the DSCC does not accept earmarked contributions.** Therefore, any contributions that is received by the DSCC that appears to be earmarked to a particular candidate will be returned. Any check that bears the name of a candidate, including a memo line note such as "tally to _____" or "for _____" will be returned unless it is accompanied by a signed and properly worded letter or response card that indicates that the donor understands the tally program (see number 3 below for acceptable language). The returned check may be accompanied by a proper solicitation for a new contribution.

2. **Candidates and their fundraising agents should tell contributors** solicited for tally contributions that the DSCC does not accept earmarked contributions and that tallied contributions are spent for DSCC activities and programs as the Committee determines within its sole discretion.

For more information:

Robert F. Bauer	(202) 434-1602	Marc E. Elias	(202) 434-1625
Judith L. Corley	(202) 434-1622	Alicia Alexion (Legal Assistant-Compliance Specialist)	(202) 434-1658
B. Holly Schadler	(202) 434-1634		

24 Hour Pager 1-800-608-3145

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3. **All written tally solicitations should include the following language:**

> **The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.**

This language should be included as its own paragraph or a part of another and should be included in its entirety.

4. **Candidates are encouraged, when possible, to have the DSCC review tally fundraising solicitations.**

The tally program will continue to be a valuable DSCC fundraising program. In the future we will be providing further written and oral guidance regarding the tally program to you. In the meantime, if you have any questions please do not hesitate to contact the DSCC.

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D

Democratic Senatorial Campaign Committee

430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447

Internet: info@dscc.org

J. Robert Kerrey, NE
Chairman

Program Chair

Next Majority Trust
John Breaux, LA

Women's Council
Barbara Mikulski, MD
Barbara Boxer, CA

Leadership Circle
Kent Conrad, ND

Labor Council
Russ Feingold, WI

DSCC Roundtable
David Pryor, AR
Carol Moseley-Braun, IL
Patty Murray, WA

February 8, 1996

Thank you for your recent contribution to the Democratic Senatorial Campaign Committee. However, we are unable to accept your generous contribution due to Federal Election Commission guidelines regarding "earmarked" contributions.

The memo line of your check indicates that your contribution is for the "Wyden Campaign." In order to avoid any misperception concerning the intent of your contribution, I am returning your check. While the Oregon Senate race ended with a victory for Senator Ron Wyden, it proved to be extremely expensive and the campaign needs to pay-off a debt. If you would like to help Senator Wyden reduce his campaign debt, please make your check payable to Wyden for Senate and send it to the following address:

Wyden for Senate
P.O. Box 3498
Portland, OR 97208

Thank you for your cooperation in assisting the DSCC to comply with federal campaign laws, and for your support of Senator Wyden.

Sincerely,

Tim Tozer
Finance Assistant

Paid for and authorized by the Democratic Senatorial Campaign Committee
Contributions are not tax deductible.

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E

Democratic Senatorial Campaign Committee
430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447
Internet: info@dscc.org

J. Robert Kerrey, NE
Chairman

Program Chairs

West Majority Trust
John Breaux, LA

Women's Council
Barbara Mikulski, MD
Barbara Boxer, CA

Leadership Circle
Kent Conrad, ND

Labor Council
Russ Feingold, WI

DSCC Roundtable
David Pryor, AR
Carol Moseley-Braun, IL
Patty Murray, WA

June 24, 1996

Thank you for your $5,000 contribution to the Democratic Senatorial Campaign Committee. Unfortunately, we cannot accept the check in its current form because it is made payable to the "DSCC for Benefit of Ben Nelson." Under federal law, the DSCC is prohibited from accepting contributions earmarked for Senate candidates. That is to say the DSCC may not serve as a conduit in order to funnel money directly to our Senate candidates. In order for your contribution to be in compliance with federal election laws, please issue a replacement check made payable to the "DSCC."

The DSCC may allocate a certain amount of money to each state based upon population. For the 1996 Senate campaign in Nebraska, the DSCC may spend up to $165,126 to support Governor Nelson in his bid for the U.S. Senate. Senator Bob Kerrey has already pledged that the DSCC will do everything possible to ensure Governor Nelson succeeds Senator Exon as the next U.S. Senator from Nebraska. Your participation in the DSCC will help make this possible.

Along with your contribution, I have enclosed information regarding the DSCC's "tally" program. Please read the information carefully, and if you should have any questions please feel free to call me at (202) 224-2447. Thank you for your patience and understanding in assisting the DSCC to properly comply with federal election guidelines and restrictions.

Sincerely,

Tim Tozer
Finance Assistant

Paid for and authorized by the Democratic Senatorial Campaign Committee
Contributions are not tax deductible.

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F

Democratic Senatorial Campaign Committee

430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447

Internet: info@dscc.org

J. Robert Kerrey, NE
Chairman

Program Chair

Next Majority Trust
John Breaux LA

Women's Council
Barbara Mikulski MD
Barbara Boxer CA

Leadership Circle
Kent Conrad ND

Labor Council
Russ Feingold WI

DSCC Investitable
David Pryor AR
Carol Moseley-Braun IL
Patty Murray WA

November 14, 1995

Thank you for joining Senator Daschle and the DSCC on November 6, 1995. Your support will provide Senator Daschle and the DSCC with the resources necessary to wage successful Senate campaigns in 1996.

As per a telephone conversation between Kim Koivisto of Senator Daschle's office and your office, I am returning your recent contribution. The memo line of your check states that the contribution is "in honor of Senator Simon and Daschle." Since it is unlawful for the DSCC to "earmark" contributions, we are obligated to return your check under federal law. If you should desire to issue a replacement check, please do so at your earliest convenience. Your cooperation and understanding in helping the DSCC comply with federal election guidelines is appreciated.

Thank you again for your support of Senator Daschle and the DSCC.

Sincerely,

Tim Tozer
Finance Assistant

Paid for and authorized by the Democratic Senatorial Campaign Committee
Contributions are not tax deductible.

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G

Democratic Senatorial Campaign Committee

430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447

Internet: info@dscc.org

J. Robert Torricelli, NJ
Chairman

Program Chairs

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Barbara Boxer, CA

Leadership Circle
Kent Conrad, ND

Labor Council
Russ Feingold, WI

DSCC Roundtable
David Pryor, AR
Carol Moseley-Braun, IL
Patty Murray, WA

Democratic Senatorial Campaign Committee
THE TALLY OPTION

WHAT ROLE DOES THE DSCC PLAY?

Funding Democratic Senate Nominees

The Democratic Senatorial Campaign Committee is a national party committee formed by the Democratic members of the U.S. Senate to help raise funds to provide campaign services for Democratic U.S. Senate incumbents and candidates throughout the country. The Finance Staff of the DSCC raises funds which are allocated to targeted Democratic Senate races based on factors such as the campaign's need and winability. These funds provide nominees with an extra source of funding apart from what is raised by the individual campaigns. The DSCC raises funds in a variety of ways through its donor programs and through national fundraising activities. PAC and personal funds are accepted by the DSCC. Contributions to the DSCC are not tax deductible under federal law.

WHY GIVE TO THE DSCC?

Under FEC regulations, an individual may contribute a maximum of $2,000 directly to a candidate running for Federal office. ($1000 in the primary and another $1000 for the general election). In addition, an individual may contribute up to **$20,000** annually to a political party organization, such as the DSCC, which is part of the overall federal limit of $25,000 per person per year as set by the Federal Election Commission. PAC's may contribute a maximum of **$15,000** annually to the DSCC. DSCC contributions allow donors to further support Democratic Senate candidates. This important source of funds can make the critical difference between winning and losing in the final days leading up to an election.

WHAT DOES "TALLY" MEAN?

When contributing to the DSCC, a donor may request that his or her contribution be "tallied" to the Democratic Senate candidate(s) of his or her choice. **This is a way for a donor to express support for a candidate or candidates and how he or she would like the success in raising the contribution credited.**

DSCC funds are allocated to targeted Democratic Senate candidates by the Allocation Committee of the DSCC. This committee sets the DSCC allocation policies at its discretion. In allocating funds to candidates, many factors are considered by the DSCC's Senate Allocation Committee such as need, winability, latest polling figures, finances on hand and the amount of funds tallied to the DSCC for that specific candidate. **The DSCC maintains a record (a "Tally") of how much money each candidate helps to raise for the Committee. The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.** The DSCC Tally Groundrules are available to candidates, their representatives and donors on request.

HOW DO I JOIN THE DSCC SO I CAN "TALLY"?

The DSCC has many donor categories and levels of participation for PAC's and individuals with corresponding benefits for each donor group. All contributions to the DSCC at any donor level may be tallied to specific candidates by the donor. The DSCC requests that donors notify the DSCC in writing of their tally requests within 30 days of the receipt of their contribution. Tally requests in excess of 30 days cannot be honored.

For additional information, please call the DSCC Finance Division at (202) 224-2447.

Paid for and authorized by the Democratic Senatorial Campaign Committee
Contributions are not tax deductible.

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Host Committee

Ron Burkle

Edye & Eli Broad

Bob Burkett

Diane & John Cooke

Barry Diller

Debbie & Sim Farar

Stanley Hirsh

Peter M. Hoffman

David Geffen

Ed McGrath

Karen & Gary Winnick

(Host Committee in formation)

Senator Bob Kerrey
Chairman of the Democratic Senatorial Campaign Committee

Cordially invites you to join him and special guests

Senator Barbara Boxer **Senator Bill Bradley**
Senator Chris Dodd **Senator Carl Levin**

for a reception to benefit the
Democratic Senatorial Campaign Committee

Friday, June 23, 1995

at the home of
Ron Burkle
Green Acres
Beverly Hills

7:00 p.m.
Cocktails and Hors d'oeuvres

For more information contact
Tricia Riffenburgh at (818) 980-6961

$1,000 Contribution
$5,000 DSCC California Roundtable membership

9704350049 48

DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE

☐ Yes, I/We will attend. Enclosed is my contribution of $ _____ .

☐ I/We are unable to attend, but would like to help elect Democrats to the Senate. Enclosed is my contribution of $ _____ .

☐ Yes, I/We would like to join the DSCC's California Roundtable. Enclosed is my contribution of $5000 which will entitle me to a one year membership.

☐ I/We would like to tally my contribution to _____ .
(See Reverse for Details)

Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of $200 in a calendar year.

Name _____ Phone (____) _____

Home Address _____

City and State _____ Zip _____

Title or Position _____ Self-Employed ☐

Employer or Firm _____ Phone (____) _____

Business Address _____

City and State _____ Zip _____

Make checks payable to:
Democratic Senatorial Campaign Committee, and return in the enclosed envelope to:
859 Hollywood Way, Suite 294, Burbank, CA 91505

Authorized and paid for by the Democratic Senatorial Campaign Committee.
Contributions are not tax deductible on federal tax returns.
Corporate contributions cannot be accepted.

9/0438049942

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The DSCC maintains a record (a "Tally") of how much money each candidate helps to raise for the Committee. The amount of money to be spent by the DSCC on behalf of the party nominee is based on the nominee's tally record and among other factors, the nominee's likelihood of winning and need for DSCC funds.

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9704380951

Senator Paul Wellstone

Senator Bob Kerrey
Chairman of the Democratic Senatorial Campaign Committee

request the pleasure of your company
at a dinner to support

the Democratic Senatorial Campaign Committee

at
the home of

Janice and Mark Dayton

Monday, August 19, 1996
6:00 pm dinner

1701 Mount Curve Avenue
Minneapolis, Minnesota

$5,000 contribution
Business Attire

R.S.V.P. Card Enclosed or call
Mark Dayton at (612)377-5747

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- Paid for and authorized by the Democratic Senatorial Campaign Committee. Contributions are not tax deductible.

H

YES, I would like to support the Democratic Senatorial Campaign Committee and help elect Democrats to the U.S. Senate!

___ I will attend the reception and dinner ($5,000)
___ I am unable to attend, but want to help. Enclosed is my contribution in the amount of _____

Please make checks payable to the Democratic Senatorial Campaign Committee. If you prefer to pay by credit card, please complete the following information:

☐ Visa ☐ MasterCard

Number_____ Exp. Date_____

Federal Law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of $200 in a calendar year.

Name_____

Address_____

City_____ State_____ Zip_____

Phone_____ Bus. Phone_____

Self Employed_____ Title or Position_____

Employer (or Firm)_____

Bus. Address_____

City_____ State_____ Zip_____

Contributions are not tax deductible. Paid for and authorized by the Democratic Senatorial Campaign Committee, 430 South Capitol Street, SE Washington, DC 20003. (202)224-2447

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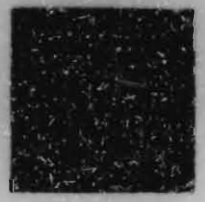
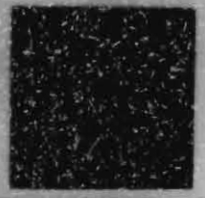
9704380495 3





H

Dionne Davies

Robert Finch

George Gould

Sonny Hall

Jim and Warrie Price

Paul Quinn

Thomas H. Quinn

Bob and Marcia Riesman

Mark Weiner

Committee in Formation

SENATE DEMOCRATIC LEADER

Senator Tom Daschle

DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE CHAIRMAN

Senator Bob Kerrey

and

RI SENATE CANDIDATE

Congressman Jack Reed

invite you to join them at a reception
salluting the distinguished career of retiring

Senator Claiborne Pell

to benefit the

Democratic Senatorial Campaign Committee efforts to elect a new Democratic Majority and Congressman Jack Reed as the next Democratic Senator from Rhode Island

at the home of Thomas H. Quinn
1217 28th Street, NW
Washington, DC

[illegible]

Minimum Contribution: $1,000

Please RSVP by enclosed card or call
Chris Lang at (703) 790-2899 or
Liz Salsa (202) 485-3146

Paid for by the Democratic Senatorial Campaign Committee

☐ Yes! I will attend the Salute to Senator Pell. ($1,000 Contribution). Amount $ _____

☐ No, I am unable to attend, but enclosed is my contribution of $ _____

Please make checks payable to the Democratic Senatorial Campaign Committee
If you prefer to pay by credit card, please complete the following information:

☐ VISA ☐ MASTERCARD

NUMBER _____ EXP. DATE _____

Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of $200 in a calendar year.

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

PHONE _____ BUSINESS PHONE _____

TITLE OR POSITION _____ ☐ SELF EMPLOYED

EMPLOYER (OR FIRM) _____

BUSINESS ADDRESS _____

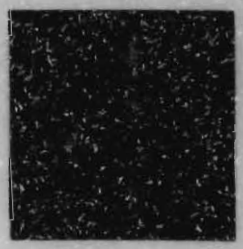
CITY _____ STATE _____ ZIP _____

TICKETS UNDER THE NAME: _____ RESERVE: _____

I understand the tally system, and would like my contribution tallied to the Rhode Island nominee

Signature _____

Paid for by the Democratic Senatorial Campaign Committee



ATENTTION: LIZ SILVA
430 South Capitol St., SE
Washington, DC 20003

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9704380 4955

- The Democratic Senatorial Campaign Committee (DSCC) is a national party committee formed by the Democratic members of the U.S. Senate to help raise funds to provide campaign services for Democratic U.S. Senate incumbents and candidates throughout the country.

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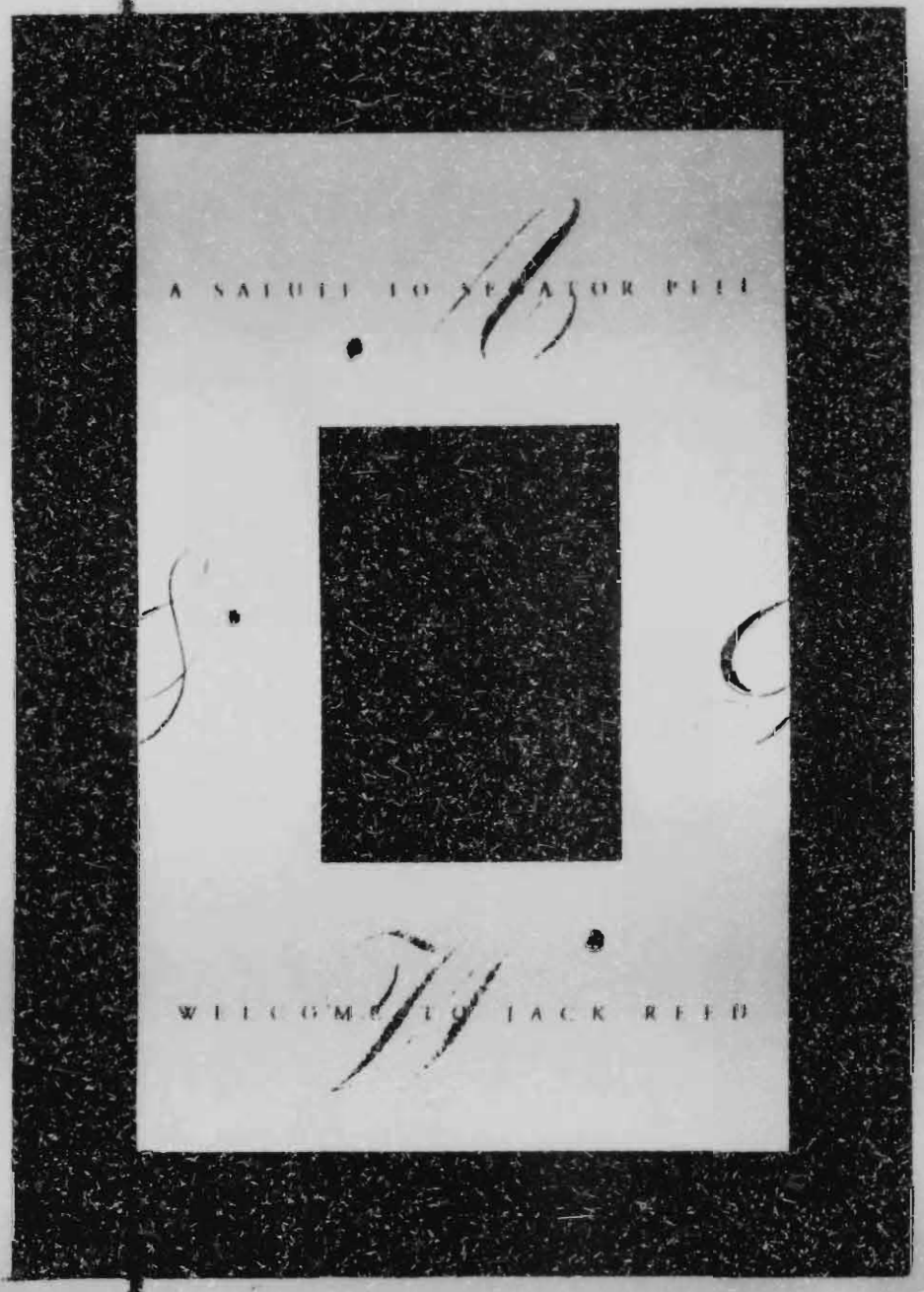
- Paid for and authorized by the Democratic Senatorial Campaign Committee, Donald J. Foley, Treasurer. Contributions are not tax deductible.



9704380956

THE HONORABLE JIMMY CARTER

THE HONORABLE SAM NUNN

and

THE HONORABLE ZELL MILLER

Cordially invite you to attend a dinner honoring

MAX CLELAND

in his bid for the United States Senate

On Monday, September 30, 1996

at the JW Marriott Hotel
3300 Lenox Road, N.E.
Atlanta, Georgia

7:00 - 9:00 p.m.
Business Attire

$1,000 per person dinner
$10,000 host committee

Please RSVP by enclosed card or call Tommy Thompson at (770)458-2662

Paid for by the Democratic Senatorial Campaign Committee
Contributions are not tax deductible

The Democratic Senatorial Campaign Committee (DSCC) is a national party committee formed by the Democratic members of the U.S. Senate to help raise funds to provide campaign services for Democratic U.S. Senate incumbents and candidates throughout the country.

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Allocation Formula for Funds

The allocation for funds raised under this Agreement shall be as follows:

Contributors shall be advised and the proceeds shall be allocated as follows:

The first $1,000 of each contribution from an individual and the first $5,000 of any contribution from a qualified multicandidate committee PAC will be allocated to Friends of Max Cleland Campaign Committee and designated for the general election. Any portion of any contribution in excess of these amounts or that would cause a contributor to exceed applicable contribution limits to Friends of Max Cleland Campaign Committee will be allocated to the DSCC.

All other contributions to the extent they are allowed under Georgia law, such as individual contribution in excess of federal limits, will be allocated to the DSCC.

Yes! I Would Like To Support the
Georgia Victory Fund
And Help Elect Max Cleland To The U.S. Senate!

___ I will serve on the Host Committee, be a table buyer (10 seats) and attend the special reception ($10,000).
___ I will attend the dinner ($1,000)

For additional details, please call Tommy Thompson at (770)458-2002.

Please make checks payable to "Georgia Victory Fund."
Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of $200 in a calendar year.

Name _____

Address _____

City _____ State _____ Zip _____

Phone _____ Bus. Phone _____

Self Employed _____ Title or Position _____

Employer (or Firm) _____

Paid for by the Democratic Senatorial Campaign Committee
Contributions to this committee are not deductible for federal income tax purposes.
Please see reverse for more details

9704380-4957

Democratic Senatorial Campaign Committee
430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447
Internet: info@dscc.org

J. Robert Kerrey, NE
Chairman

Program Chairs

Heart Majority Trust
John Breaux, LA

Women's Council
Barbara Mikulski, MD
Barbara Boxer, CA

Leadership Circle
Kent Conrad, ND

Labor Council
Russ Feingold, WI

DSCC Roundtable
David Pryor, AR
Carol Moseley-Braun, IL
Patty Murray, WA

FAX COVER SHEET

Please Deliver As Soon As Possible

Date: _____ Time: _____

To: Laurie Borders

From: LISA COWELL

Send to FAX #: 312-832-0468

COMMENTS: Caught a typo. looks ok w/ changes If you want to add the "tally" option - you must also include the language attached - (see *) in place noted. They must write in a name (hopefully DD!!) and sign. Can do this in lieu of a tally letter. If you do this, please fax to me so I can show my lawyer, too. thanks

Number of Pages to Follow: 4

DSCC Telephone: (202) 224-2447
Lisa Cowell's Direct Line: (202) 485-3110
DSCC FAX: (202) 485-3120

Paid for and authorized by the Democratic Senatorial Campaign Committee
Contributions are not tax deductible.

9704380-4958

①

Durbin
Contribution Form

Contribution List & Edition Number

Contribution		Contribution	
$500	#	$2,500	#
$500	#	$1,000	#
$1,500	#	$1,000	#
$2,500	#	$1,000	#
$1,000	#	$500	#
$1,000	#	$750	#
$1,000	#		

Total Contribution: _____

Payment

Check

Please make checks payable to the Illinois Senate Victory Fund.

Visa & Mastercard Payment

Name (as appears on Credit Card): _____

Card #: _____ Exp Date

~~**Expiration Date:**~~ _____

Shipping and Handling Charges

Please make shipping checks payable to

Shipping:

- **$20 - Wegman & Hoiser prints only**
- **$50 - 5 or less prints**
- **$75 - more than 6 prints**
- **$125 - set**

This is a joint ....

Name: _____

Address: _____

City, State _____

Phone: _____ **Fax:** _____

Occupation: _____ **Employer:** _____

☐ Please tally _____

My contribution should be designated according to the allocation formula stated on the reverse.

Signature: _____

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(2)

Durbin

Take off Durbin letterhead + use plain

Illinois Senate Victory Fund

Illinois Senate Victory Fund is a joint fundraising committee authorized by Friends of Dick Durbin and the Democratic Senatorial Campaign Committee (DSCC).

The first $1000 of each federal contribution from an individual and up to the first $5000 of a contribution from a qualified multi-candidate committee PAC will be allocated to Friends of Dick Durbin and designated for the general election. Any portion of any contribution in excess of these amounts or that would cause a contributor to exceed applicable contribution limits to Friends of Dick Durbin will be allocated to the DSCC.

Notwithstanding the allocation formula, any contributor may designate his or her contribution for a particular participant. The allocation formula above may change if any contributor makes a contribution that, when allocated, would exceed the amount he or she can lawfully give to any participants.

The DSCC is a national party committee, formed by the Democratic United States Senators to help raise funds for the Democratic U.S. Senate candidates throughout the country. It can accept donations from individuals of up to $20,000 per calendar year (not to exceed the total $25,000 yearly federal limit) and from PAC's up to $15,000 per calendar year.

The DSCC is authorized to allocate $1.1 million in Illinois to support the ~~Durbin for Senate Campaign~~. Illinois Senate race.

For more information please contact Nancy Kohn, Chicago Finance Director, Friends of Dick Durbin, (312) 832-9600.

Paid for by Illinois ~~Friends of Dick Durbin~~

~~190 N. Dearborn, Suite 500 • Chicago, IL 60610 P. O. Box 1963 • Springfield, IL 62705~~

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Front

DURBIN

☐ I will attend the October 12, 1996 Fundraiser

☐ Enclosed is my contribution:

- ☐ $100 Individual Ticket
- ☐ $500 Patron
- ☐ $1,000 Sponsor

☐ I cannot attend, but want to help Dick Durbin. Enclosed is my contribution of $_____.

DO add this to 1 page

This is a joint fundraising event for Friends of Dick Durbin and the Democratic Senatorial Campaign Committee. Please make checks payable to "Illinois Senate Victory Fund."

Federal law requires political committees to record the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of $200 in a calendar year.

NAME _____

RESIDENCE ADDRESS _____

CITY _____ STATE _____ ZIP _____

PHONE _____ BUSINESS PHONE _____

TITLE OR POSITION _____ ☐ SELF EMPLOYED

EMPLOYER (OR FIRM) _____

BUSINESS ADDRESS _____

CITY _____ STATE _____ ZIP _____

My contribution should be designated according to the allocation formula stated on the reverse.

SIGNATURE _____

Paid for by Illinois Senate Victory Fund, c/o Friends of Dick Durbin, [illegible] Chicago, IL [illegible] Tel. (312) [illegible] Fax (312) [illegible]
Contributions to this committee are not deductible for federal income tax purposes. Corporate contributions cannot be accepted.

Back

ILLINOIS SENATE VICTORY FUND

Illinois Senate Victory Fund is a joint fundraising committee authorized by Friends of Dick Durbin and the Democratic Senatorial Campaign Committee (DSCC).

The first $1000 of each federal contribution from an individual and up to the first $5000 of a contribution from a qualified multi-candidate committee PAC will be allocated to Friends of Dick Durbin and designated for the general election. Any portion of any contribution in excess of these amounts or that would cause a contributor to exceed applicable contribution limits to Friends of Dick Durbin will be allocated to the DSCC.

Notwithstanding the allocation formula, any contributor may designate his or her contribution for a particular participant. The allocation formula above may change if any contributor makes a contribution that, when allocated, would exceed the amount he or she can lawfully give to any participant.

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The DSCC is authorized to allocate $1.1 million in Illinois to support the Durbin for Senate Campaign.

For more information please contact Nancy Kokn, Chicago Finance Director, Friends of Dick Durbin, (312) 232-9600.

10-04-1996 9:16AM FROM

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☐ Yes, I/We will attend. Enclosed is my contribution of $_____.

☐ I/We are unable to attend, but would like to help elect Democrats to the Senate. Enclosed is my contribution of $_____.

☐ I/We would like to tally my contribution to _____.
(See Reverse for Details)

Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of $200 in a calendar year.

Name_____ Phone _____
Home Address_____
City and State_____ Zip _____
Title or Position_____ Self-Employed ☐
Employer or Firm_____ Phone_____
Business Address_____
City and State_____ Zip _____

Make checks payable to:

Democratic Senatorial Campaign Committee, and return in the enclosed envelope to:
430 South Capitol Street, S.E., Washington, D.C. 20003

Authorized and paid for by the Democratic Senatorial Campaign Committee.
Contributions are not tax deductible on federal returns.

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M

The DSCC Tally Program:

Recycling or Electioneering?

William T. Bianco

Dept. of Political Science

Duke University
Durham, NC 27708 - 0204

May 22, 1995

97043804963

This analysis uses statistical techniques to examine the strategy used by the Democratic Senatorial Campaign Committee (DSCC) in its allocations of funds to senate candidates in the 1992 and 1994 elections. In particular, it focuses on the allocations of funds that are a part of the DSCC's tally program -- that is, contributions to the party that were generated through the efforts of individual candidates. The question is: in making allocations to candidates, did the DSCC focus on the amount of tally receipts collected by a candidate for the party, with candidates who tallied more receiving larger allocations (the recycling hypothesis)? Or does the DSCC's allocation strategy reflect a wider range of factors, consistent with the goal of allocating funds so as to preserve the party's incumbent base and elect as many challengers as possible (the electioneering hypothesis)? That is, are DSCC allocations driven by the goal of recycling tally funds, or by the goal of electing candidates to office?

Evaluating these hypotheses is not an easy task, owing to the small number of cases available for analysis (35 each in 1992 and 1994) and the FEC-mandated state-by-state limits on DSCC allocations. Nevertheless, analyses of 1992 and 1994 tally and allocation data, with appropriate controls for factors such as the electoral prospects of different candidates, their ability to raise funds, and the variable cost of campaigning in different states, indicate that the recycling hypothesis is an insufficient explanation of the DSCC's allocation strategy. Rather, consistent with the electioneering hypotheses, DSCC allocations are strongly influenced by political variables, such as the closeness of a race and the cost of campaigning.

This paper proceeds as follows. First it describe the recycling and electioneering hypotheses, noting, where appropriate, the differences in their predictions concerning variation in tally receipts and in DSCC allocations across candidates. It then turns to a critical test of these predictions using various multivariate statistical techniques, including maximum likelihood estimation, followed by an interpretation of the results and a brief conclusion. (The technical details of these estimations, along with the parameter estimates, are in Appendix One.)

The Two Hypotheses: Predictions about Allocation and Tallying

This section sets out the two hypotheses, recycling and electioneering, that frame later analysis of tallying and allocation. In essence, each hypothesis is a claim about the motives that underlie the DSCC's allocations to candidates running under the party label. In addition, predictions are made about the pattern of tally receipts and allocations that would be observed if a given hypothesis were true. The central goal of the analysis presented later is to test these predictions and determine which if any are true.

The Recycling Hypothesis

The essence of the recycling hypothesis is simple. By law, individuals are severely limited in the amount of money they can contribute directly to a senate candidate. However, the limits for contributions to a party committee such as the DSCC are much higher. Moreover, while the DSCC is limited by law in the amounts it can contribute to a senate candidate, these limits are far higher than those faced by individual contributors. Hence, it is logically possible that the DSCC could function as a mechanism for contributors to bypass the limits on individual contributions. This result would arise if the DSCC kept track of how much individual candidates raised for the committee through the tally program, then returned tallied contributions to the candidates who helped to raise them. Contributors would be writing a check to the party, but they would be in effect helping their favored candidate get elected.

Two predictions, one dealing with allocations and one with tally receipts, follow from

the recycling hypothesis. To begin with, if the recycling hypothesis is true, a candidate's allocation should be closely related to his or her tally receipts. That is, candidates who tallied extensively should receive large allocations, while candidates who tallied relatively smaller amounts (for whatever reason) should receive smaller allocations. More specifically, the recycling hypothesis implies that a candidate's allocation from the DSCC should equal 100 percent of his or her tally, consistent with the notion that the DSCC keeps records on the amount of tallied funds raised by each candidate, then eventually returns these contributions to the candidate who raised them in the form of coordinated spending.[1]

The second prediction concerns candidates' propensity to raise tally funds. Specifically, if the DSCC returned 100 percent of tally receipts to the candidates who helped to raise them, and if this policy were common knowledge (which seems a trivial assumption), then candidates would have considerable incentive to work at generating tally contributions -- the same effort that would produce a relatively small direct contribution could instead be directed at generating a much larger indirect contribution via the tally program. The only limit would be the state-by-state limits on the amount of funds that the DSCC can allocate to candidates. Of course, candidates who are running pro forma campaigns, either because their victory was certain or because they had no chance to win, would not be expected to tally much in any case. But consider candidates locked in close races: they need all the help they can get. Thus, if the recycling hypothesis was true, we would expect that tally receipts would track state allocation limits -- if, say, a state's limit was one million dollars, we would expect the party's candidate from that state, if he or she was in a tight race, to tally roughly that amount. Moreover, we would expect candidates in noncompetitive races to tally virtually nothing at all. And if some tallying is observed from incumbents in the latter group, the amount should be unrelated to their state's allocation limit.

The Electioneering Hypothesis

The electioneering hypothesis builds on the conventional wisdom on senate elections and the role that contemporary party organizations play in these elections (e.g., Jacobson 1993). The premise of this literature is that the party organizations are purposive actors whose campaign-relevant decisions are a function of two factors, (a) the party's goals and (b) political context, or the electoral prospects of the party's candidates. Simply put, party organizations are expected to focus their efforts -- and their allocations -- on maintaining and increasing the party's cohort in Congress by protecting incumbents and aiding the campaigns of competitive challengers running under the party's banner.

Specifically, the electioneering hypothesis posits that large allocations will be given to two classes of candidates: incumbents who have some significant change of losing their seat, and challengers with a good chance of either unseating their opponent or of winning an open seat. The remaining types of candidates, incumbents in safe races and challengers with little or no chance of winning, will receive low or no allocations -- safe incumbents do not need funds from the party in order to run a winning campaign, while hopeless challengers are nearly certain to lose no matter what the party does for them. Moreover, allocations will be shaped by the cost of campaigning in different states: looking only at incumbents and challengers running in

[1] The reader may question the specifics of this prediction, arguing that it is also possible to construct modified versions of the recycling hypothesis in which a lower level of tallies, say 50 percent, was recycled back to candidates, with the remainder reserved for allocations based on political considerations. This possibility is addressed and refuted in later analysis.

competitive campaigns, candidates in states where the cost of campaigning is high will receive larger allocations than candidates in states where the cost of campaigning is low.

Just as with the recycling hypothesis, the electioneering hypothesis implies specific patterns of allocation as well as variation in tally receipts across candidates. To begin with, if the electioneering hypothesis is correct, we should expect to see a candidate's allocation vary with the political variables discussed above.[2] Targeted candidates (incumbents who might lose, challengers who might win) will receive larger allocations than untargeted candidates; within the set of targeted candidates, allocations also vary as a function of the cost of campaigning. (Recall that the recycling hypothesis implies that a candidate's allocation will vary with the size of his or her tally receipts, with no weight attached to political variables.)

The electioneering hypothesis also predicts systematic variation in tally receipts. Specifically, a candidate's tally receipts should vary with his or her campaign prospects and ability to attract campaign contributions. Candidates with relatively poor chances have little incentive to raise funds for the party -- all their efforts will be focused on their own campaigns. Thus, the electioneering hypothesis implies that targeted candidates (incumbents who might lose, challengers who might win) will tally more funds than candidates whose chances are poor as well as more than safe incumbents However, given the scholarly literature's emphasis on the idea that party organizations work to increase the size of the party's cohort in Congress, the electioneering hypothesis predicts that safe incumbents will tally at a higher rate compared to hopeless challengers, with the expectation that these receipts will be redistributed to targeted candidates. Finally, holding prospects constant, a targeted candidate's ability to generate tally funds should vary with her overall ability to raise funds for her own campaign. (In contrast, the recycling hypothesis posits that the amount of funds tallied by a candidate will vary principally with her state's allocation limit.)

Analysis and Results

This section presents the results of statistical analysis of the DSCC's tally program for the 1992 and 1994 elections. The technical details of the analysis, including model specifications, variable definitions, estimation techniques, and parameter estimates, are all contained in Appendix 1. This section focuses on interpreting the results of the analysis.

Political Factors in the Allocation Process

As noted in the Appendix, the results of statistical analysis of DSCC allocations (as shown in Table One) provides considerable support for the electioneering hypothesis. However, the raw parameter estimates do not by themselves disprove the recycling hypothesis. Additional interpretation of these estimates presented in this section allows a more definitive conclusion, one in favor of the electioneering hypothesis.

Given the form of the recycling hypothesis, one obvious way to interpret the raw

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[2] In addition, as noted in the Appendix, because of data limitations it would be no surprise to find (as later analysis does) a positive relationship between allocations and tally receipts, even if the electioneering hypothesis was true and the recycling hypothesis false. Thus, the critical test between the two hypotheses, recycling and electioneering, lies in a determination of the extent to which political variables played a significant role in determining the allocation of DSCC funds.

estimates in Table One is to plot the maximum and minimum predicted allocations to a candidate as a function of his or her tally receipts. The "Max. Predicted" line shows what the party would give to a candidate who really needs the money and could use it to good effect -- in substantive terms, such a candidate hails from a state where the cost of campaigning is high and is locked in a tight race with his or her opponent Conversely, the "Min. Predicted" line shows the party's allocation to a candidate who does not need the money -- because he or she is well ahead or hopelessly behind, and in a state with low campaign costs. According to the electioneering hypothesis, there should be considerable distance between the maximum and minimum lines, reflecting the fact that the DSCC's allocation to a candidate varies with the political situation in the candidate's race rather than with his or her tally.[3] In contrast, the recycling hypothesis predicts that the maximum and minimum lines should be close together, and centered on 100 percent -- that is, a candidate's allocation should be a simple reflection of his or her tally, with 100 percent of tally receipts being recycled into an allocation.

The maximum and minimum predicted allocations derived from table one are plotted in figure one for candidates in the 1992 election cycle. A dotted line at 100 percent is added for clarity. (Recall that if the recycling hypothesis is correct, the maximum and minimum predicted allocations should be close to this line.) The plots show that allocations vary the most for low values of tallying, then move closer together (but remain substantially apart) at higher levels of tallying.[4] For example, the analysis reveals that for a candidate who tallied $250,000, the DSCC's predicted allocation will be between 60 percent and 450 percent of this amount. (This prediction can be seen by looking upward from between the "200" and "300" tick marks on the x-axis of figure one, to the points on the maximum and minimum lines, then over to the y-axis. Note that the scale on the y-axis, measuring the maximum and minimum allocations, is a logarithmic scale.) Similarly, given a candidate who tallied $1,000,000, the DSCC's predicted

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[3] In theory, the min. predicted line for allocations should stay at or near zero regardless of a candidate's tally receipts. However, this plot lies substantially over zero in figures one and two. While it is reasonable to expect that the minimum level of DSCC allocations to a candidate would be zero, two factors combine to raise the min. predicted line over the zero level in our analysis. The first is difficulties involved with measuring a candidate's election prospects. While the analysis uses a well-known and well-accepted measure developed by *Congressional Quarterly*, the discrete nature of this variable undoubtedly omits some of the variation in electoral prospects -- variation which the estimation technique could well attribute to the tally variable in the equation that estimates the DSCC's allocations to a candidate. The second factor is that a candidate's tally receipts may themselves function as a signal of her electoral prospects. For both of these reasons, it is no surprise to find a nonzero min. predicted line. This anomaly presents no problem for the results discussed here, as the fact that the min. and max. predicted lines lie substantially apart in figures one and two is sufficient to support the electioneering hypothesis and refute the recycling hypothesis. In fact, if it were possible to control for the factors noted here, the revised analysis would generate a min. predicted line that was lower than the one shown here, increasing the distance between the max. predicted and min. predicted line, and further supporting the electioneering hypothesis.

[4] The fact that the lines are so far apart at low levels of tallying is no surprise given the electioneering hypothesis: a good candidate who was unsuccessful at tallying will still receive a substantial allocation from the DSCC. At higher levels of tallying, however, the same allocation to the same top-flight candidate is a lower percentage of the (larger) amount tallied. Again, this pattern is precisely what would be expected given the electioneering hypothesis was true and the recycling hypothesis was false.

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allocation is between 60 percent and 200 percent of this amount.

Figure one reveals strong evidence in favor of the electioneering hypothesis. In general, for any level of tallying, there is a wide range of predicted allocations, some far from 100 percent of tally receipts. Depending on their situation, candidates may receive more than 100 percent of their tally receipts from the DSCC, but on the other hand, they may receive substantially less. Clearly, the DSCC's allocation strategy is not one of simple recycling. Rather, the DSCC's allocation decisions appear to be driven by political factors such as candidates' electoral prospects and variation in the costs of campaigning across states.

Figure two repeats this presentation of results for the 1994 election cycle. While the precise shape of the maximum and minimum predicted allocation lines differ somewhat from those derived from the 1992 data, the basic message is the same: allocations can vary widely as a function of political context, but there is no tendency for the allocation lines to cluster near 100 percent, the value predicted by the recycling hypothesis.

The reader may question the conclusion drawn from figures one and two, arguing that the analysis has pitted the electioneering hypothesis against a relatively extreme alternate scenario, one where all tally contributions are recycled back to the candidates who raised them (i.e., the recycling hypothesis). Specifically, the reader might wonder about the validity of a modified recycling hypothesis, where some fixed fraction of tally receipts (e.g., 50 percent) were recycled, with the remainder allocated according to political criteria. Both figures one and two show that this possibility is not supported by the data. The plots describing a candidate's minimum and maximum predicted allocation show that depending on circumstances (the candidate's electoral prospects and the cost of running a campaign in her state), a candidate may receive an allocation that far exceeds his or her tally, or an allocation that is far less than her tally receipts.[5] The predictions also vary across the two election cycles analyzed here. Thus, there is no fixed minimum (or maximum) percentage of tally receipts that candidates can expect as an allocation regardless of their political circumstances.[6] Similarly, contributors lobbied by a candidate to make a contribution at the to the DSCC could not reasonably expect that some fixed percentage of their contribution would be recycled to the candidate in question. Rather, they would have to expect that DSCC allocations would be made based on political context -- a context that may result in an extremely large allocation to their candidate, or a very

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[5] While the figures one and two show a nonzero minimum level of tallying, this finding was shown earlier to be a predictable and nonsubstantive result of anomalies in the data. Even if we accept this result as substantive, it does not support a modified recycling hypothesis (i.e., 50 percent of tally receipts are recycled), as the minimum predicted allocation varies across the range of tally receipts. Attempts to explain this variation as a byproduct of some complex and difficult-to-specify recycling scheme invariably wind up looking identical to the electioneering hypothesis.

[6] Moreover, extreme values of the explanatory variables (campaign costs and campaign prospects) that were not observed in the 1992 or 1994 elections, or additional factors such as an election that is considered a "must win" by the DSCC might push predicted allocations even higher than is seen in figures one and two. Similarly, the DSCC might make no allocation to a candidate whose prospects for winning are considered hopeless, or who is ideologically out of step with the party platform on issues of the highest salience -- even if the candidate has tallied substantial funds to the DSCC. Thus, the variation in allocations observed here is, if anything, an underestimate of what happens and what might happen in the real world.

small, even nonexistent, allocation.

Political Factors and Tally Receipts

Figure three provides a similar interpretation of the second part of the analysis, relating tally receipts to state allocation limits for the 1992 data. As in figures one and two, the two solid lines plot the maximum and minimum predicted tally receipts for a candidate as a function of the allocation limit for the candidate's state.[7] (However, the scale on the y-axis in figure three is linear rather than logarithmic.) The difference between the maximum and minimum lines represents political context -- the candidate's electoral prospects and his or her ability to raise funds. The "Max. Predicted" line gives the amount of tallying predicted for a candidate who is engaged in a tight race and who has a well-developed fundraising organization, while the "Min. Predicted" gives the expected amount of tallying for a candidate who is well out of the running and expends little effort on the tally program. As in figures one and two, a horizontal (dotted) line at 100 percent is added as a reference. This is the amount of tallying that would be expected under the recycling hypothesis.

As in the case of allocations, the recycling hypothesis predicts that the maximum predicted tally in figure three should lie near 100 percent, reflecting the idea that if that tally receipts are generally returned to candidates, strong candidates should work to generate tally receipts right up to their state's allocation limit, as this limit provide a ceiling on what the party can give to them.[8] If, on the other hand, the electioneering hypothesis is true, the maximum and minimum lines should be relatively far apart, reflecting the notion that tally receipts reflect political context rather than an expectation of recycling. The maximum should not lie near the 100 percent line as well.

The message of figure three is simple: not only do tally receipts vary with political circumstances, they show no signs of tracking allocation limits. In states with low allocation limits, candidates may tally nothing at all -- or they may tally far more than the limit, reflecting the possible variation in election prospects and in candidates' ability to raise funds. As allocation limits increase, candidates are likely to tally something, but far less than the maximum

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[7] Again, the min.predicted line is not at the theoretically reasonable position -- at zero regardless of allocation limit -- because of an anomaly in the data. The problem is the empirical regularity that elections in large (high-population) states (i.e,, California, New York, etc.) tend to attract national attention. Moreover, owing to this national attention and to the relative partisan balance of these states, their elections almost always feature well-qualified, politically attractive challengers. In contrast, small states with low allocation limits are more likely to have low-salience races with challengers who do not attract much support or run a credible campaign. The result is a nonzero minimum level of tallying, a level which increases with the allocation limit -- the circumstances that would yield zero tallying (the theoretic minimum) simply do not arise in high-allocation limit states. As with the discussion of the minimum level of allocations, this anomaly does not compromise the analysis, as the observed differences between minimum and maximum tallies are sufficient to distinguish between the electioneering and recycling hypotheses. Moreover, absent the empirical regularity discussed here, the minimum predicted tally line would be expected to lie at zero.

[8] One might argue that this expectation might not hold for states with extremely high allocation limits (i.e., California), but it should surely hold for states with low and medium ceilings.

allocation that they could receive from their party. In short, there is no evidence of recycling, and much evidence of electioneering.

A similar pattern is evidenced in the analysis of 1994 tally data as shown in figure four. In fact, the plots are virtually identical. Again, tally receipts are not linear with allocation limits. Moreover, candidates are predicted to tally substantially different amounts depending on their political circumstances.

Conclusion

Within the limits of available data, the message is clear: the DSCC's allocation of funds collected through the tally program appears to reflect a political strategy, one directed at preserving the party's incumbents running for reelection and electing as many of the party's challengers to office. While there are certainly isolated pieces of evidence that are consistent with the recycling hypothesis, once the results are considered within a multivariate framework, the electioneering hypothesis emerges as the clearly best explanation of the DSCC's actions.

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Appendix One:

Models, Variables, and Parameter Estimates

To begin with, both the direct test of the role of political factors in allocation decisions (Figures one and two) are derived from a statistical model where DSCC allocations are assumed to be a function of a candidate's election prospects, the cost of campaigning in her state and the amount tallied to the DSCC by the candidate. By simultaneously assessing the importance of political factors and tally receipts in determining allocation decisions, this specification allows the critical test between the recycling and electioneering hypothesis described earlier.

The equation used to analyze DSCC allocations and the associated hypotheses takes on the following form:

$$\text{Allocation} = \beta_0 + \beta_1(\text{Tally}) + \beta_2(\text{Tally*Chal}) + \beta_3(\text{Target*Expend}) + \beta_4(\text{Target*Expend*Incumb}), \quad (1)$$

Where:

Allocation	The DSCC's allocation to candidate i ($1000).
Tally	Candidate i's tally receipts to the DSCC ($1000).
Target	1 if candidate was an incumbent in danger of losing, or challenger with good chance of winning (This measure was constructed from data in *Congressional Quarterly*'s October 1992 and 1994 Election Outlook issues.)
Chal	A dummy variable, 1 if candidate i is a challenger, 0 otherwise.
Expend	A measure of the cost of campaigning in candidate i's home state, as developed by Gronke (1993).
Incumb	A dummy variable, 1 if candidate i is an incumbent, 0 otherwise.

This specification reflects the earlier discussion. The parameters will be estimated separately for 1992 and 1994, allowing for the possibility that the DSCC's allocation strategy might have varied between the two years. The predictions for parameters are as follows. If the electioneering hypothesis is true, β_3 should be significant and positive -- that is to say, higher allocations will be made to targeted candidates, and to targeted candidates running in high-cost states. Similarly, β_4 should also be positive and significant, reflecting the DSCC's special interest in reelecting incumbents. As noted earlier, a literal reading of the electioneering hypothesis would imply that estimates for both β_1 and β_2 should be zero (nonsignificant), implying that a candidate's tally has no impact on his or her allocation. However, as noted later, limitations on available data raise the possibility that these parameters will be positive and significant, even if the electioneering hypothesis is true.

If, on the other hand, the recycling hypothesis is true, a different pattern of estimates in the allocation equation should be observed. To begin with, β_1 and β_2 should both be positive and significant, reflecting the notion that tally receipts are recycled to the candidates who helped to raise them. Moreover, β_3 and β_4 should both be equal to zero (nonsignificant), reflecting the unimportance of political factors in determining allocation decisions.

Estimation of equation (1) is complicated by the fact that the DSCC's allocations to candidates are limited by a federally-mandated cap on total allocations. The magnitude of the cap varies state-by-state as a function of state population. As a result, the dependent variable -- DSCC's allocations to candidate i -- may be censored for some observations, meaning that the

DSCC might have wished to donate more money to candidate i but was limited by the allocation cap in i's state. The technical term for this phenomena is *censoring*. Left uncorrected, censoring would bias the analysis, although the direction of the bias is difficult to predict without careful study of the dataset being analyzed. Happily, techniques exist to correct for censoring. This analysis uses the correction discussed in Maddala (1983, 158-160).

Using the correction given in Maddala and estimating the model using maximum likelihood techniques, the resulting parameter estimates are given in table one. In general, the pattern of parameter estimates in table one supports the electioneering hypothesis: political factors appear to play a significant role in determining DSCC allocations. Such a finding is completely contrary to the recycling hypothesis, and places its validity in doubt. However, table one also shows the tally variables to be significant which, while not surprising, mandates the additional analysis contained in figure one of the main text.[9] For more details, and for a more definitive conclusion about the electioneering and recycling hypotheses, see the main text.

The corresponding equation for the analysis of tally receipts in figures three and four is as follows:

$$\text{Tally} = \beta_0 + \beta_1(\text{Limit}) + \beta_2(\text{Receipts*Target}) + \beta_3(\text{Receipts*Target*Incumb}) \quad (2)$$

Where:

Tally	Candidate i's tally receipts to the DSCC ($1000).
Limit	The Federally-mandated allocation limit for i's state ($1000)
Receipts	Candidate i's campaign spending, less party contributions, taken from *Politics in America, 1992* and *1994* ($1000)
Target	1 if candidate was incumbent in danger of losing, or challenger with good chance of winning (This measure was constructed from data in *Congressional Quarterly*'s October 1992 and 1994 Election Outlook issues.)
Incumb	A dummy variable, 1 if candidate i is an incumbent, 0 otherwise.

This equation does not exhibit the censoring problems noted for the allocation equation, and can therefore be estimated with ordinary least squares. And as in the case of the allocation regression, the 1992 and 1994 datasets will be analyzed separately. Predictions for the variables are as follows. If the electioneering hypothesis is correct, β_2 and β_3 should be positive and significant. In contrast, the recycling hypothesis would predict that both variables would be equal to zero (i.e., nonsignificant). The recycling hypothesis predicts that β_1 will be positive and significant, while the electioneering hypothesis predicts it will not be significant, subject to the caveat noted earlier concerning data limitations.

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[9] It should be noted that because of data limitations, the tally variables could well be statistically significant, as shown in table one, even if the recycling hypothesis were false and the electioneering hypothesis true. This problem arises because of the factors noted earlier: the preponderance of competitive elections in large states, problems involved with measuring a candidate's campaign prospects and attractiveness, and the possible use of tally receipts as a signal of both prospects and attractiveness. For all of these reasons, it would be no surprise to find that the tally variable "picks ups" variation in allocations that is actually explained by differences across candidates in the likelihood of election -- even if the electioneering hypothesis is a complete explanation of the allocation process, and the recycling hypothesis completely false

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Parameter estimates for equation (2) are given in table two. Again, the signs and significance of the parameter estimates are consistent with the electioneering hypothesis, although the parameter associated with the limit variable (β_1) is significant as the recycling hypothesis predicts.[10] (Note, if particular, that safe incumbents tally at a higher level than nontargeted challengers but at a lower rate compared to targeted candidates of all types. This result is completely contrary to the recycling hypothesis, and supports the electioneering hypothesis.) A more definitive conclusion is offered in the main text.

[10] As with allocations, a positive relationship between tally receipts and allocation limits could exist even if the recycling hypothesis were false and the electioneering hypothesis true. For example, an association between receipts and allocation limits could reflect the fact that states with higher allocation limits have more people within their borders and, as a result, more opportunities for soliciting tally contributions. Moreover, high-population states (e.g., California, Florida, Illinois, New York, and Texas) also tend to have large urban areas, which are prime locations for fundraising events cosponsored by the DSCC and local candidates. Both factors would lead to a positive relationship being observed between tally receipts and allocation limits, even if the recycling hypothesis is completely false.

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References

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Jacobson, Gary. 1993. *The Politics of Congressional Elections*. 3rd Edition. New York: Harper Collins.

Maddala, G. S. 1983. *Limited-Dependent and Qualitative Variables in Econometrics*. New York: Cambridge University Press.

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Table One: Parameter Estimates for Allocation Regressions

Variable	1992 Election Cycle		1994 Election Cycle	
	Parameter	Sig. Level	Parameter	Sig. Level
Constant	11.3 (22.9)	-	-17.9 (27.8)	-
$ Tallied	.56 (.16)	< .01	.92 (.10)	< .01
$ Tallied (Chal. Dummy)	.42 (.19)	< .05	.63 (.17)	< .01
Targeted Candidate	.47 (.09)	< .01	.70 (.22)	< .01
Targeted (Inc. Dummy)	.51 (.20)	< .05	-.39 (.30)	n.s.
Inverse Mills Ratio	-10.1		-59.4	
R^2	.97		.95	
N of Cases	33		34	

Cell entries are parameter (std. error).

Table Two: Parameter Estimates for Tally Regressions

Variable	1992 Election Cycle		1994 Election Cycle	
	Parameter	Sig. Level	Parameter	Sig. Level
Constant	-50.4 (35.5)	-	-87.5 (44.5)	-
Allocation Limit	.32 (.08)	< .01	.40 (.065)	< .01
Targeted Candidate* Expenditures	.042 (.025)	< .05	.086 (.013)	< .01
Safe Incumbent* Expenditures	.029 (.021)	< .10	.029 (.016)	< .05
R^2	.83		.85	
N of Cases	34		34	

Cell entries are parameter (std. error).

Figure 1
Predicted Allocation as Function of Amount Tolled
(1992 Election Cycle)

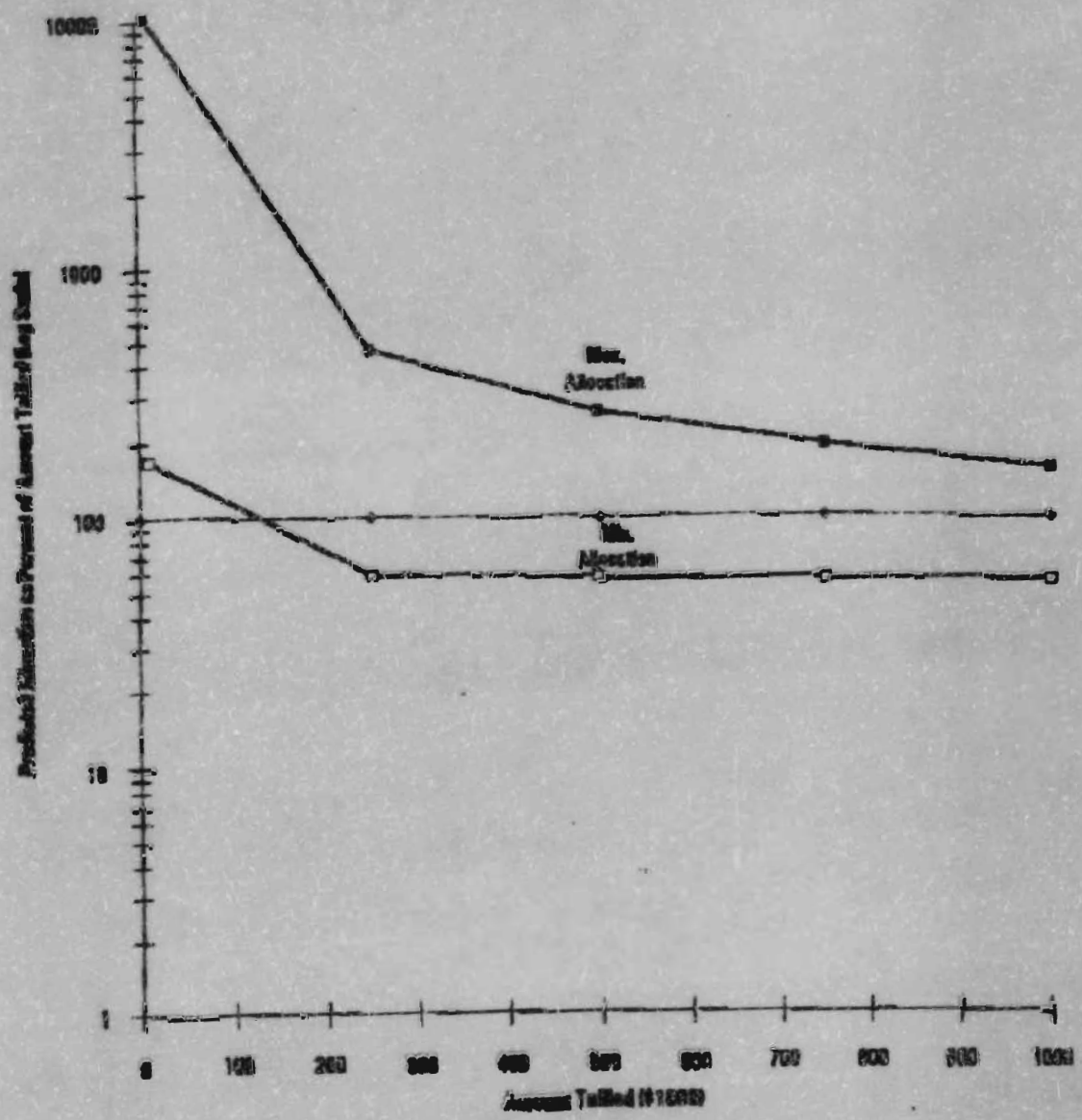

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Figure 2
Predicted Allocation as Function of Amount Tolled
(1994 Election Cycle)

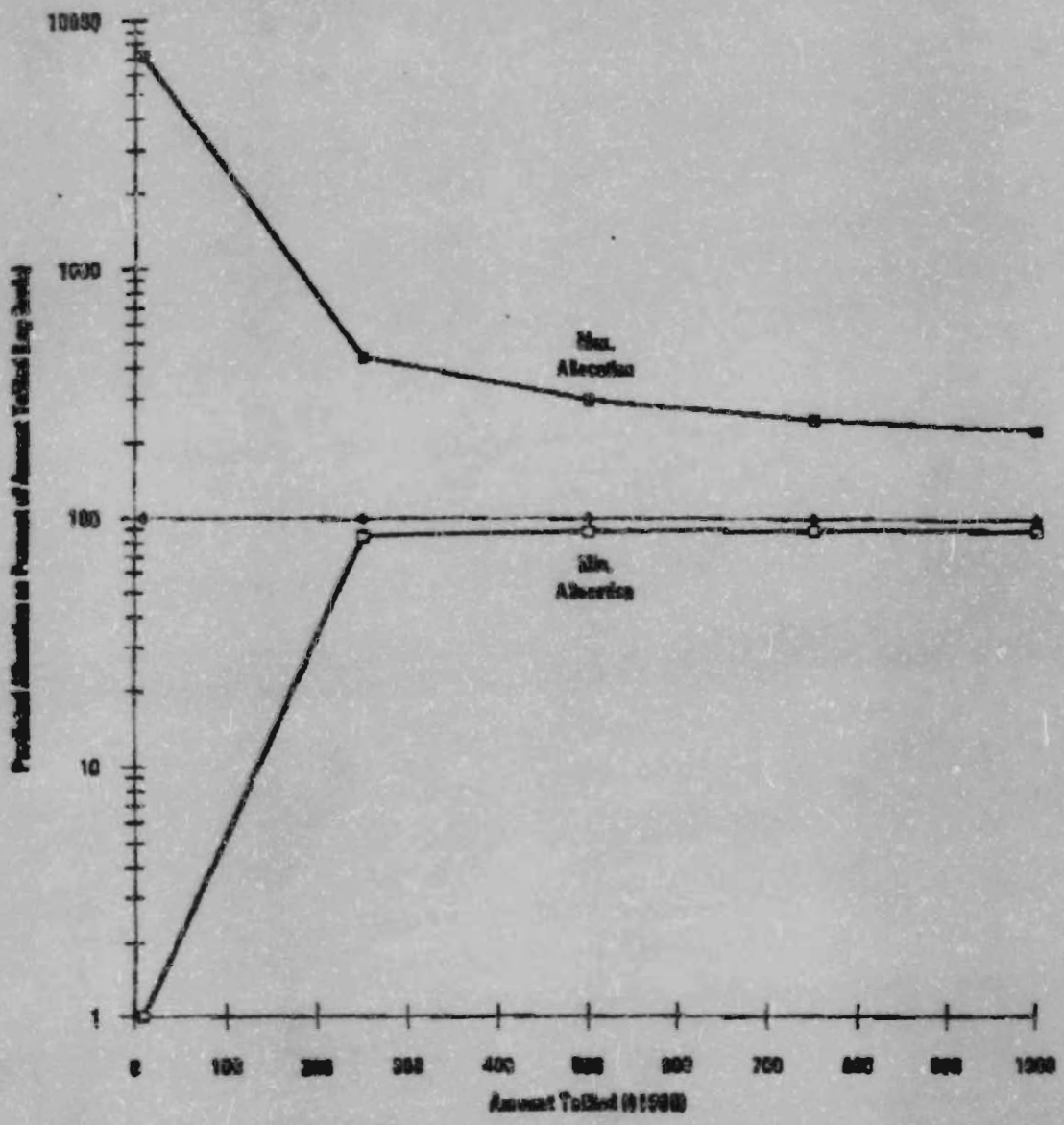

Figure 8
Predicted Tally as Function of Allocation Limit
(1992 Election Cycle)

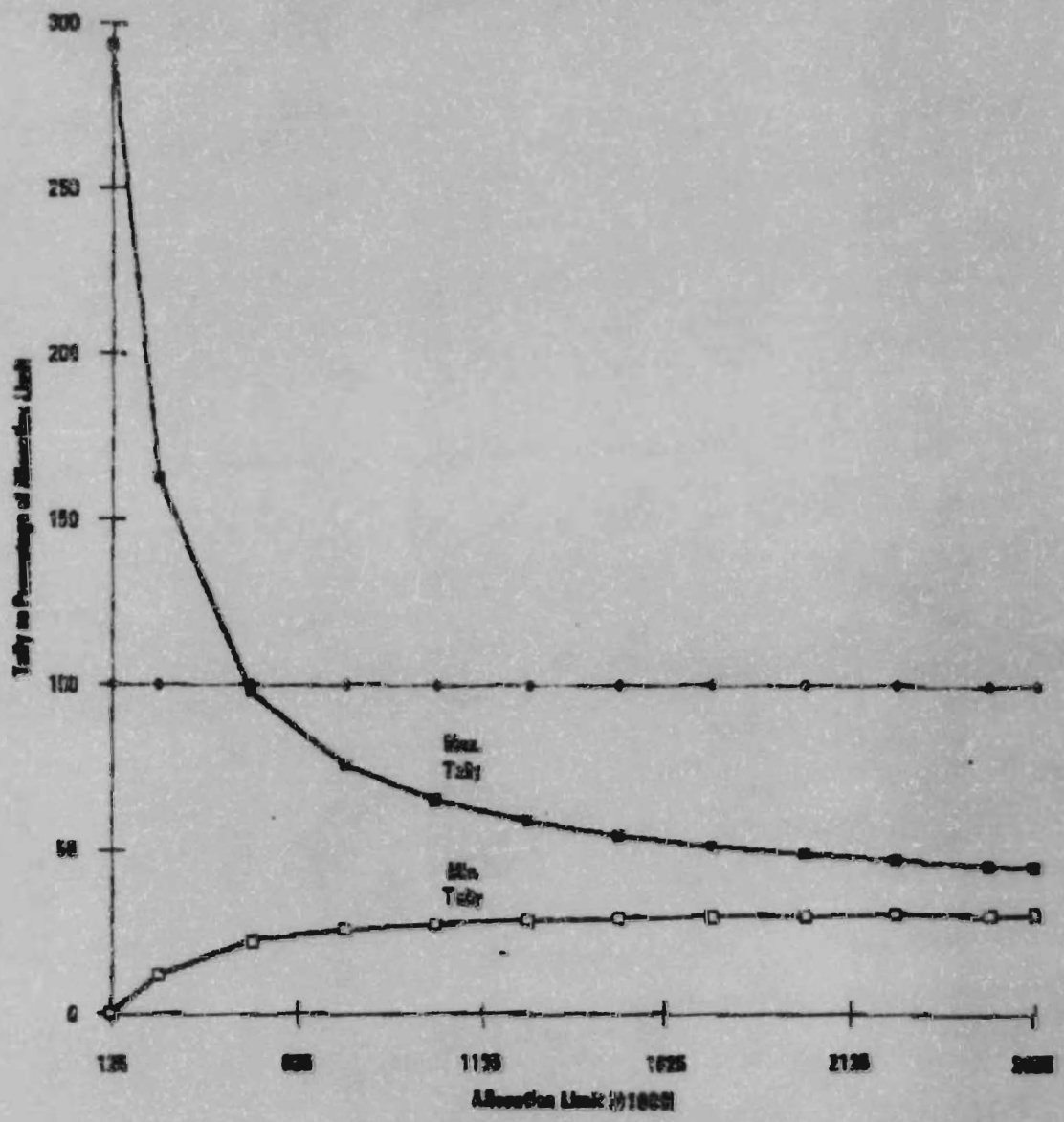

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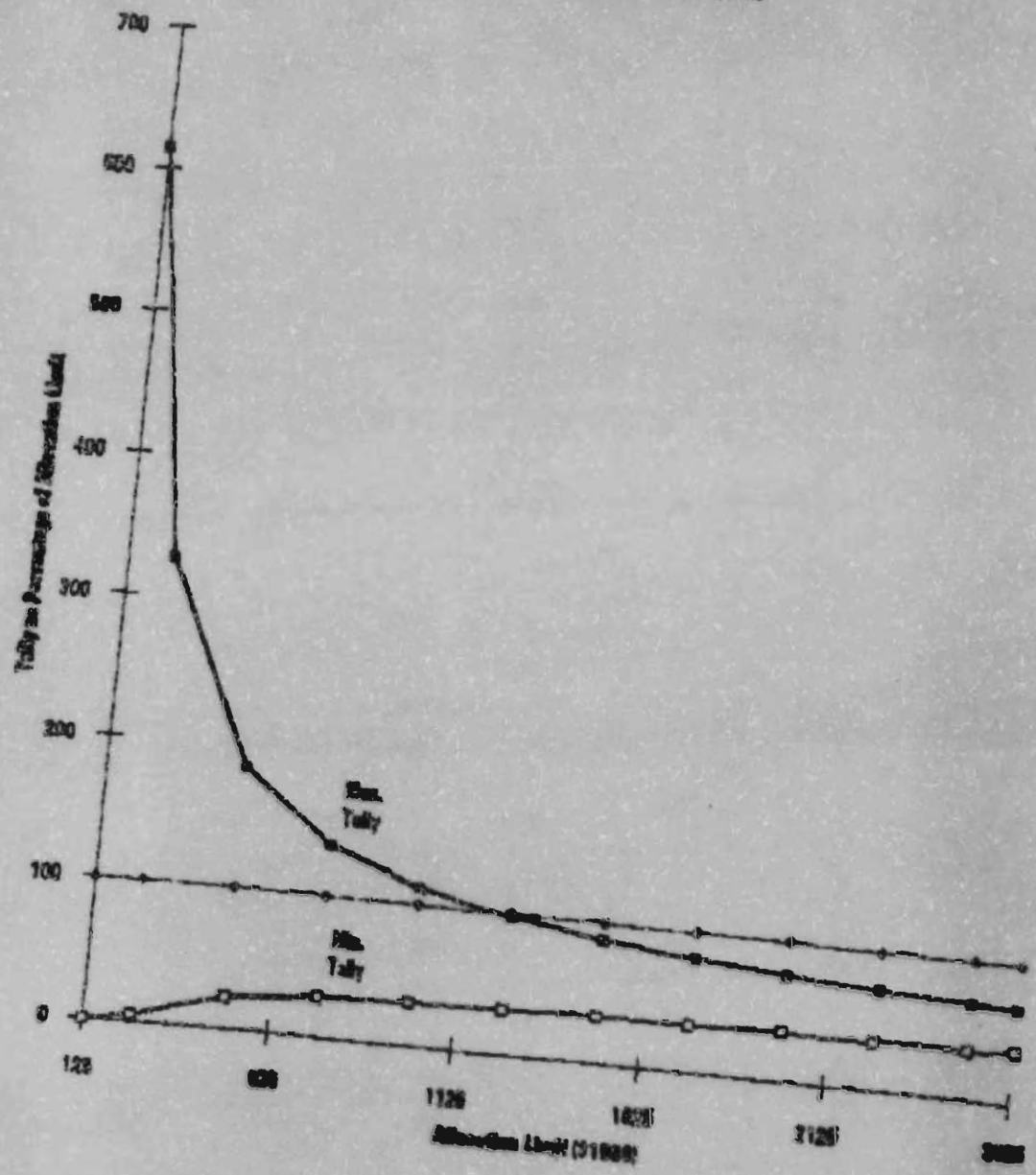
Figure 4
Predicted Tally as Function of Allocation Limit
(1986 Election Cycle)



N

March 11, 1996

Ms. Melissa Maxfield
Democratic Senatorial Campaign Committee
430 South Capitol Street, S.E.
Washington, D.C. 20003

Dear Melissa:

Please tally the
contribution of $5,000 to the Democratic Senatorial Campaign Committee to Senator Jim Exon.

The understands that the DSCC does not accept contributions earmarked for a particular candidate and that this contribution will not be treated as an earmarked contribution. We further understand that contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

Sincerely,

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April 23, 1996

Ms. Stephanie Cooper
Finance Director
Democratic Senatorial Campaign Committee
430 South Capitol Street, S.E.
1st Floor
Washington, D.C. 20003

Dear ~~Ms. Cooper~~ Stephanie:

Please tally to the name of Senator Max Baucus $1000 of my contribution to the DSCC.

Sincerely,

97043801982

P

The Honorable Bob Kerrey
Democratic Senatorial Campaign Committee
430 South Capitol Street, SE
Washington, D.C. 20003
June 24, 1996

Dear Senator Kerrey,

On June 21, 1996 I made a $19,000.00 contribution to the DSCC. I am writing to request that the DSCC tally my previous contribution toward Represenative Bob Torricelli who is running for United States Senate from the state of New Jersey. I understand that the DSCC does not accept contributions earmarked for a particular candidate. I further understand that contributions tallied for a particular candidate will be spent for DSCC activities and programs as the committee determines within its sole discretion.

Thank you for your cooperation in tallying my previous contribution.

✓

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One Massachusetts Avenue, N.W. · Suite 330 · Washington, DC 20001 · (202) 682-0005 · Fax (202) 682-0014

Q

September 12, 1996

DSCC
Rita Lewis, Finance Director
430 South Capitol St. SE
Washington, DC 20003

Dear Rita,

I understand the SDCC "tally" program which has been explained to me in the following way:

Tally is not an earmarking program, and the DSCC does not accept earmarked contributions. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

Please tally my DSCC contribution of $20,000.00 to the name of Sen. Barbara Boxer.

Tally 75% Boxer
25% Women's Council

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September 27, 1996

Ms. Stephanie Cooper
Democratic Senatorial Campaign Committee
430 South Capitol Street, S.E.
Washington, DC 20003

Dear Stephanie,

In accordance with your letter dated September 25, 1996, please find enclosed a check in the amount of $15,000.

Per your letter, I will become a member of the Majority Trust Program from now until December 31, 1997.

Under separate cover, I am enclosing some tally sheet requests which, of course, I understand are subject to the discretion of the Democratic Senatorial Campaign Committee.

Kindest regards,

Enclosure: Check No. 1108

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S

October 10, 1996

DSCC
Rita Lewis, Finance Director
430 South Capitol St., SE
Washington, DC 20003

Dear Rita:

I understand the DSCC "tally" program which has been explained to me in the following way:

Tally is not an earmarking program, and the DSCC does not accept earmarked contributions. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

Please tally my DSCC contribution of $10,000 as well as my wife contribution for $10,000 to the name of Senator Barbara Boxer.

Sincerely,

Enclosure

[redacted] [redacted]

97043804986

October 11, 1996

DSCC
Rita Lewis, Finance Director
430 S. Capitol St., SE
Washington, DC 20003

Dear Rita:

I understand the DSCC "tally" program which has been explained to me in the following way:

> Tally is not an earmarking program, and the DSCC does not accept earmarked contributions. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

Please tally my DSCC contribution of $10,000 to the name of Senator Barbara Boxer.

With kind regards,

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Dear Candidate,

Governor Roy Romer, Democratic Chair Michael Beatty and I would like to invite you to an important DSCC event. January 12-15, 1996 is the DSCC Majority Trust weekend in Aspen. This is a weekend where we bring together our $20,000 contributors from around the country. We will also be joined by Senators **Howell Heflin, Joe Biden, Frank Lautenberg, Tom Harkin** and **Byron Dorgan**, with many other special guests not yet confirmed. Please review the enclosed schedule for the weekend.

This weekend is an important opportunity for you as well. As a special incentive for Coloradans, we are offering them this weekend for $5000. In addition, our Friday night dinner of this weekend being hosted by Bob Udey, Chairman of First Southwest Company, will be open to Colorado individuals who donate $1000 to the DSCC. All the funds raised through these individuals will be credited to the Colorado tally.

As you know, the DSCC is allowed to allocate $325,000 to the Colorado Senate race. The money that you raise now and throughout 1996 will enable us to fully fund Colorado and our other competitive Senate races around the country. I am asking each Colorado Senate candidate to commit to raising $10,000 toward this weekend. These funds are crucial if the DSCC is to reach its goal of fully funding our Democratic nominees. I have enclosed tally information for you and your donors.

I look forward to seeing you in January. If you have any questions, please feel free to call me at 202-224-2447. If I am not there, please speak to Liz Silva of the DSCC staff.

Sincerely,

Bob Kerrey

Enclosure

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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT
MAR 13 4 16 PM '97

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	**MUR 3620, Conciliation**
Democratic Senatorial Campaign	)	**Agreement Inquiry**
Committee and Paul Johnson, as	)	**MUR 4490**
Treasurer, et. al.	)	**MUR 4502**

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On September 27, 1996, the National Republican Senatorial Committee ("NRSC") filed an Emergency Motion for Civil Enforcement of the Conciliation Agreement, alleging that the Democratic Senatorial Campaign Committee ("DSCC") has knowingly and willfully violated the remedial provisions of the conciliation agreement in MUR 3620. At its October 1, 1996, Executive Session, the Federal Election Commission ("Commission") decided to forward the NRSC's motion to the DSCC and to wait for a response from the DSCC before determining how to proceed in this matter. The Commission received the DSCC's Memorandum in Opposition to the National Republican Senatorial Committee's Motion for Civil Enforcement on October 17, 1996.

Because there was insufficient information to verify whether the DSCC had fully complied with the conciliation agreement, the Commission, on October 29, 1996, opened an inquiry in MUR 3620 and approved a Subpoena for the Production Documents and Answers to Interrogatories to the DSCC. The DSCC responded to the subpoena and order on December 13, 1996. Attachment 1. The DSCC also responded to follow-up questions on January 24, 1997. Attachment 2.

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At issue in MUR 3620 was whether certain contributions made to the DSCC and tallied to the DSCC accounts of various Democratic Senate candidates during the 1991-92 and 1993-94 election cycles were actually earmarked to those candidates. On August 15, 1995, the Commission accepted a signed conciliation agreement from the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, and took no further action against the candidates. Besides requiring the payment of a $75,000 civil penalty, which the DSCC paid, the conciliation agreement required the following remedial action, which was to occur within 30 days after the agreement became effective:

> a. For contributions to the DSCC that appear to be earmarked, the DSCC will refund the contributions or forward the contributions to the designated candidate, in accordance with 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 102.8, 110.6(b)(2)(iii), and 110.6(c)(1).
>
> b. On an on-going basis, the DSCC will provide additional education and training to DSCC staff and participants in the tally program, including the staff of Democratic senate candidates, which will emphasize that: (1) DSCC does not accept contributions earmarked for a particular candidate; (2) tallied contributions will be spent for DSCC activities and programs as the Committee determines within its sole discretion; and (3) contributors must be advised of (1) and (2) above when the DSCC and tally program participants solicit tallied contributions.
>
> c. The DSCC will utilize standard language in its solicitations pertaining to the tally program and, as part of its education and training, will instruct its tally participants to include this language in solicitations distributed by such candidates, their committees and their agents. This language will provide, in substance, that the DSCC does not accept contributions earmarked for a particular candidate and that tallied contributions will be used as the DSCC determines in its sole discretion. At a minimum, the language will state that: "The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion."
>
> d. The DSCC will implement reasonable procedures to review DSCC and Democratic Senate candidate fundraising solicitations pertaining to the tally program to ensure that the solicitations cannot be reasonably read to solicit

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> earmarked contributions, in accordance with the requirements of Section VI(2)(b)-(c) of this agreement.

Conciliation Agreement at Section VI, Paragraph 2.

After filing its Emergency Motion regarding the conciliation agreement in MUR 3620 on October 1, 1996, the NRSC filed a complaint on similar grounds, designated as MUR 4490, which named the DSCC, most Democratic Senate candidates running for election in 1996, and certain unnamed contributors. The basis of the complaint was that these respondents had violated the conciliation agreement, as well as the earmarking and excessive contribution provisions of the Federal Election Campaign Act of 1971, as amended, ("Act" or "FECA") through the 1996 operation and participation in the DSCC's tally program. On October 8, 1996, the NRSC filed an additional complaint, MUR 4502, on the same basis which added an additional Democratic Senate candidate as a respondent. All of these respondents were notified of the complaint, and most responded. The main response of the DSCC and a Motion to Dismiss was received on November 29, 1996, and it was similar in content to the DSCC's response to the emergency motion.

For the reasons given below, this Office recommends that the Commission close the inquiry into the conciliation agreement in MUR 3620 and close the files in MUR 4490 and MUR 4502.

II. ANALYSIS – MUR 3620, CONCILIATION AGREEMENT INQUIRY

The response to the interrogatories sent in the MUR 3620 conciliation agreement inquiry is consistent with the DSCC's response to the NRSC's Emergency Motion, except that the answers are sworn under the penalty of perjury. The DSCC contends that

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it fully complied with the four remedial provisions required by the August of 1995 conciliation agreement, and it did so in a timely manner. After examining the response, it appears that the DSCC did substantially implement the four requirements of the conciliation agreement. However, because there are a few outstanding concerns suggesting that the DSCC needs to make additional efforts to ensure total compliance with the spirit as well as the letter of the agreement, this Office recommends sending a cautionary letter notifying the DSCC that it should amend its procedures to strengthen its compliance.

A. Treatment of Earmarked Contributions.

As required by the conciliation agreement, the DSCC must refund to contributors contributions that appear to be earmarked or forward them to the designated candidate pursuant to the requirements of the FECA, and the DSCC appears to have implemented this requirement. Conciliation Agreement at Section VI, Paragraph 2(a). As discussed in the DSCC's response to the Emergency Motion and reiterated in its answers to the interrogatories, the DSCC has adopted a policy that if a contribution appears to bear any indicia of earmarking it will be returned to the contributor. Attachment 1 at 3-4. These indicia include such items as memo line notes bearing the name of a candidate, and the phrases "tally to ____" or "for ____." According to the DSCC, its only exception to this policy is if the contribution is accompanied by a letter or response card indicating that the contributor understands the tally program.

This policy was explained to DSCC staff and the staff of candidates orally and in memoranda. Id. at 4, 15 and 17. In addition, particular checks were reviewed by DSCC

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counsel to determine whether they complied with the requirements of the conciliation agreement. This refund policy for earmarked contributions demonstrates that the DSCC complied with the remedial earmarking provision of the conciliation agreement. Conciliation Agreement Section VI, Paragraph 2(a).

B. Education and Training

Pursuant to Section VI, Paragraph 2(b) of the conciliation agreement, the DSCC was obligated to provide additional education and training to DSCC staff and tally participants about the new requirements of the tally program, and the DSCC appears to have implemented this requirement. According to the DSCC, training to implement the remedial provisions was conducted primarily by its outside lawyers Robert F. Bauer and Mark E. Elias. Training included in-person group seminars, pre-scheduled conference calls, and individual consultations with DSCC staff, candidates, Senate campaign staff, and fundraisers to answer questions and to provide instructions on the tally program and the conciliation agreement. Id. at 5. Memoranda distributed to DSCC staff and candidate staff after April of 1996 instructed participants on the requirements of the tally program with regard to earmarking and twice stated that "the DSCC does not accept earmarked contributions and that tallied contributions are spent for DSCC activities and programs as the Committee determines within its sole discretion." Id. at 15-18. Although all Democratic Senate campaigns received the memoranda, the DSCC cannot state that all campaigns received training and education beyond the memoranda.

Id. at 6-7.

Unlike in prior tally cycles, tally participants were informed that:

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> the tally program does not include earmarking and that the DSCC does not accept earmarked contributions. They were also told that checks that bore an indicia of earmarking would be returned. They were also instructed that campaigns and fundraisers should take steps to ensure that the contributors understood the tally program. The DSCC also instructed its fundraising staff that it had to include the agreed upon disclaimer language in all tally solicitations, and campaigns were strongly encouraged to do the same. Finally, the education and training advised that candidates should, when possible, have the DSCC review tally fundraising solicitations to ensure compliance with the MUR 3620 conciliation agreement.

Id. at 8.

According to the DSCC response, required education and training about the tally program began in September of 1995 and continues in the present. Because the memoranda containing tally instructions were printed on April 29, 1996, this Office requested supplemental information on education and training that occurred in 1995. Counsel noted that it was hard to reconstruct at this point exactly what training had taken place in 1995 to implement the conciliation agreement, and that the tally fundraising program is not very active in odd-numbered years. Nonetheless, according to the DSCC, its counsel met with the DSCC's Executive Director in August of 1995 to educate him about the requirements of the conciliation agreement and implementation of those requirements. From August through December of 1995, counsel began briefing DSCC staff and candidates on the changes in the tally program. In September of 1995, counsel met with DSCC senior staff to formulate new policies and procedures to operate the tally program and began educating DSCC administrative and fundraising personnel about the tally program revisions. By October of 1995, DSCC documents describing the tally program had been revised to include the new disclaimer language. In November of 1995,

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counsel held a formal in-person training session for the entire DSCC fundraising staff about the new tally program requirements. Attachment 2.

Based on this information, it appears that the DSCC did conduct education and training with the DSCC and candidates on the requirements of the conciliation agreement. Although a major portion of the training consisted of the distribution of the April 29, 1996 memoranda, counsel for the DSCC also held seminars and individual consultations to discuss the requirements. This education and training appears sufficient to satisfy the requirement of the conciliation agreement. Nonetheless, based on the information provided by the NRSC in its Emergency Motion, it appears that although campaign and finance staff for Democratic candidates were aware of the requirements imposed by the conciliation agreement, some of the candidates themselves made statements suggesting that they believed tallied contributions would directly help them. See discussion of statements made by Candidates Durbin and Morales, General Counsel's Report (October 24, 1996) at 6 and 7.[1] As discussed below, while this Office believes that the education and training generally were adequate and did not violate the letter of the conciliation agreement, the DSCC needs to improve them and make a greater effort to directly explain the requirements of the tally program and the conciliation agreement to the candidates.

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[1] For example, according to an Associated Press article, Congressman Durban reportedly stated: "The only way the Democratic Senatorial Campaign Committee money goes to me is if I raise the money and it is tallied to me." When asked about his campaign finances, Mr. Morales allegedly said in a campaign interview submitted by the NRSC: "I think we have about a little over $200, almost $300,000. And then there's some tally money of about $150,000. Tally money that, you know, people have tallied in my name to the DSCC."

C. Disclaimer Language

In the conciliation agreement, the DSCC agreed to utilize standard disclaimer language in its own solicitations pertaining to the tally program and to "instruct" tally participants to include the language in solicitations distributed by candidates, their committees, and their agents. Conciliation Agreement Section VI, Paragraph 2(c). The DSCC appears to have substantially implemented this requirement. In its response to the interrogatories, the DSCC states that it has "encouraged" candidates to include the disclaimer language in their solicitations, and the April 29, 1996 memoranda to 1996 Democratic Senate Candidates states that: "All written tally solicitations should include the following language: [The Disclaimer]. This language should be included as its own paragraph or a part of another and should be included in its entirety." Id. at 10 and 18 (emphasis in original).

It is clear that the DSCC utilized the agreed upon disclaimer language in solicitations distributed directly by the DSCC. This Office has reviewed a number of DSCC solicitations included in the NRSC's Emergency Motion, the DSCC's response to that motions, and the DSCC's answers to interrogatories, and all of these solicitations have included the agreed upon interrogatory language. Based on the memoranda and the responses to the interrogatories, the DSCC did stress to its candidates that they were to use the disclaimer language, and there is no indication that those candidates failed to use the disclaimer in solicitations, following distribution of the memoranda in April of 1996.[2]

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[2] As discussed in the previous General Counsel's Report, Senator Levin's solicitations to the Chrysler Corporation Nonpartisan PAC (dated October 9, 1995) and to the National Structured Settlements PAC (dated December 29, 1995) failed to include the disclaimer. Nonetheless, these solicitations were distributed prior to the memoranda and

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However, in response to the interrogatories, the DSCC informed the Commission that it only "encouraged" its candidates to include the disclaimer language, and encouragement is far less emphasis than the instruction required by the conciliation agreement. Accordingly, as discussed in this Office's recommendation to send a cautionary letter to the DSCC, the DSCC needs to do more than encourage candidates to use disclaimer language.

D. Review Procedures

Pursuant to Section VI Paragraph 2(d) of the conciliation agreement, the DSCC was obligated to implement reasonable procedures to review DSCC and Democratic Senate candidate fundraising solicitations pertaining to the tally program to ensure that the solicitations cannot be reasonably read to solicit earmarked contributions. Based on information received from the DSCC, the DSCC needs to do more to implement reasonable procedures to review tally solicitations produced by the candidates. According to the response, the DSCC communicated this "procedure" to DSCC staff and Democratic Senate candidates through formal training, written memoranda, and informal telephone consultation. The DSCC notes that it educated its staff and obviously reviewed its own solicitations, because all contain the required disclaimer.

The DSCC's memorandum to its fundraising staff states that "The DSCC should review candidate tally fundraising solicitations, when possible, to make sure they comply with the requirements set forth above." Id. at 16 (emphasis added). The memorandum to

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relatively soon after the effective date of the conciliation agreement. While the DSCC itself is specifically required to include the disclaimer language in its own solicitations, it is only obligated to "instruct" candidates to include the specific language.

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1996 Democratic Senate Candidates states that "Candidates are encouraged, when possible, to have the DSCC review tally fundraising solicitations." Id. at 18 (emphasis added). The language in the April 29, 1996 memoranda that the DSCC "should review candidate tally solicitations, when possible" is weak, and candidates have no positive or negative incentive to have their tally solicitations reviewed by the DSCC.

When asked to provide copies of all tally solicitations reviewed by the DSCC as part of these procedures, the DSCC responded: "The DSCC does not routinely maintain non-DSCC tally solicitations. All solicitations as well as those in the possession of the DSCC from candidate campaigns are attached." Id. at 12. The DSCC further states that it "is unaware of how many, if any, solicitations pertaining to the tally program since September 1, 1995 were not reviewed by the DSCC." Id. at 12. Nonetheless, the only candidate solicitation included with the response to the interrogatories which appears to have been reviewed and edited by the DSCC was for an October 12, 1996 Durbin campaign fundraiser. This was edited and changed substantially by the DSCC on October 9, 1996, after the DSCC received notification of the emergency motion on October 2, 1996. Id. at 41-44. The DSCC's use of the October, 1996, Durbin material as its only example of compliance with the review requirement raises the possibility that no other tally solicitations produced by Democratic Senate candidates were reviewed before the filing of the motion.

E. Conclusion

Based on the information included in the responses, it appears that the DSCC has, in most respects, adhered to the technical terms of the conciliation agreement. However,

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the evidence also shows that the DSCC needs to strengthen certain of its efforts in order to ensure that the steps the DSCC has taken achieve the intended purpose of the requirements in the agreement. Since it appears that there has been general compliance with the conciliation agreement, however, this Office recommends that the Commission take no further action at this time and terminate its inquiry into this matter. This Office also recommends that the Commission send a cautionary letter advising the DSCC of areas in which the organization needs to make further efforts to comply with the letter and spirit of the conciliation agreement.

The proposed letter to the DSCC states in part that the Commission will take no further action in this matter at this time, but it advises the DSCC to take steps to ensure that its operation of the tally program is modified to improve its efforts in three areas. First, it appears that some of the 1996 Democratic Senate candidates, as opposed to campaign staff, remain unaware of certain of the remedial provisions of the 1995 conciliation agreement and are still not describing the tally program accurately, calling into question the effectiveness of some of the DSCC's educational efforts. Second, the DSCC needs to "instruct" Democratic Senate Candidates to include the disclaimer in their solicitations, as opposed to merely "encourage" them. Finally, the DSCC should use stronger language with candidates to implement review procedure, because candidates currently are only "encouraged, when possible to have the DSCC review tally fundraising solicitations." Attachment 3.

A second letter advises informs the NRSC that the Commission has admonished the DSCC and will take no further action in this matter at this time. Attachment 4.

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Accordingly, this Office recommends that the Commission take no further action in the conciliation agreement inquiry in MUR 3620, approve the attached letters, close the conciliation agreement inquiry in MUR 3620, and close the file.

III. ANALYSIS in MUR 4490 AND MUR 4502

In MUR 4490 and MUR 4502, the NRSC filed complaints alleging that the DSCC, most Democratic Senate candidates during the 1996 election cycle, and various unnamed contributors had violated and were continuing to violate the 1995 conciliation agreement in MUR 3620, as well as the FECA's earmarking and excessive contribution provisions. In short, the NRSC alleges that many contributors who had "maxed" out in direct contributions to Democratic Senate candidates violated the excessive contribution prohibition by earmarking additional contributions to those candidates through the tally program. Democratic Senate candidates allegedly solicited earmarked contributions, failed to correctly report as earmarked contributions 441a(d) coordinated party funds derived from tallied contributions, and accepted excessive contributions from those contributors who had already maxed out to their campaigns. The DSCC is alleged to have solicited earmarked contributions and failed to report the receipt of earmarked contributions or forward them to the appropriate candidate.

The conclusion reached above regarding the inquiry in MUR 3620 has a derivative impact on the complaints filed in MUR 4490 and MUR 4502. The NRSC alleged that all of the new respondents named in those complaints had violated the conciliation agreement in MUR 3620. Because the DSCC was the only respondent who signed that agreement and the agreement does not require any remedial action from the

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Democratic Senate candidates or potential contributors, neither the candidates nor the contributors could have violated the conciliation agreement. As described above, this Office concluded that the DSCC did generally comply with the conciliation agreement.

The results of the inquiry into the conciliation agreement in MUR 3620 have another impact on the complaints in MUR 4490 and MUR 4502. Based on sworn statements provided by the DSCC during the inquiry and the absence of any information to the contrary, this Office concluded that there is no evidence that the DSCC did not appropriately treat earmarked contributions received in the 1996 cycle by returning such contributions to the contributors. The allegation of earmarked contributions at issue in the MUR 3620 inquiry pertained to the identical contributions received in MUR 4490 and MUR 4502. Having concluded that there is no evidence that the DSCC did not appropriately treat earmarked contributions by returning them (and thus the DSCC was not required to follow the regulations at 11 C.F.R. § 110.6), this Office concludes there is no evidence that the DSCC accepted earmarked tallied contributions or pass earmarked contributions on to the Democratic Senate candidates in the form of coordinated party expenditures. Based on this conclusion, there is no evidence that the Democratic Senate candidates received earmarked contributions that they failed to report.

Because the NRSC also alleged that the contributors made and the candidates accepted excessive contributions through contributions to the DSCC tally program, an analysis of 11 C.F.R. § 110.1(h) is pertinent to this issue. That provision states that a person may contribute to a candidate or his or her authorized committee, with respect to a particular election, and also contribute to a political committee which has supported, or

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anticipates supporting the same candidate in the same election, if three requirements are met. First, the political committee is not the candidate's principal campaign committee or other authorized political committee or a single candidate committee. Second, the contributor does not give with the knowledge that a substantial portion will be contributed to, or expended on behalf of, that candidate for the same election; and third, the contributor does not retain control over the funds. 11 C.F.R. § 110.1(h).

This provision means that a contributor can max out to a Democratic Senate candidate, and give to the DSCC through the DSCC's tally programs (a political committee which is not the candidate's principal campaign committee or other authorized political committee or a single candidate committee), as long as the contributor does not have knowledge that a substantial portion of the contribution will be expended on behalf of the candidate. Because the amount of funds tallied for a Democratic Senate candidate is only one of the factors used by the DSCC in making its allocation determinations, the contributor cannot have the knowledge that a substantial portion of the contribution will be expended on behalf of the candidate. There has never been any allegation that any contributor has retained control over tallied contributions, so the provisions of 11 C.F.R. § 110.1(h) are, met and the contribution is not considered an excessive contribution made by the contributor and accepted by the Democratic Senate candidate or the DSCC.

MUR 4490 and MUR 4502 remain in the Central Enforcement Docket and have not been activated. The Commission recently expended significant resources in analyzing the DSCC's and various Democratic Senate candidates' tally activities during

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the 1992 and 1994 election cycles in MUR 3620, concluding with the conciliation signed in August of 1995. This Office subsequently has investigated the 1996 Tally Program in connection with the inquiry into compliance with the conciliation agreement in MUR 3620.

Based on the information contained in this report, this Office believes that the Commission should exercise its prosecutorial discretion and not expend additional resources on these matters. This Office would notify the NRSC and all of the respondents of the Commission's actions through standard letters. Attachments 5 and 6. Accordingly, this Office recommends that the Commission take no action in MUR 4490 and MUR 4502, approve the attached letters, and close the files.

IV. RECOMMENDATIONS

1. Take no further action in the conciliation agreement inquiry in MUR 3620.
2. Approve the attached letters in the conciliation agreement inquiry in MUR 3620.
3. Close the conciliation agreement inquiry in MUR 3620 and close the file.
4. Take no action in MUR 4490 and MUR 4502.
5. Approve the attached letters in MUR 4490 and MUR 4502.
6. Close the files in MUR 4490 and MUR 4502.

3/13/97
Date

Lawrence M. Noble
General Counsel

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Attachments:

1. DSCC Response to Interrogatories
2. DSCC Supplemental Response
3. MUR 3620 Letter to the DSCC
4. MUR 3620 Letter to the NRSC
5. MUR 4490 and MUR 4502 Letter to the NRSC
6. MUR 4490 and MUR 4502 Letter to Respondents

Attorney assigned: Stephan O. Kline

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE ROSS
COMMISSION SECRETARY

DATE: MARCH 18, 1997

SUBJECT: MURs 3620, 4490, and 4502 - General Counsel's Report

The above-captioned document was circulated to the Commission on **Friday, March 14, 1997**.

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

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

This matter will be placed on the meeting agenda for **Tuesday, March 25, 1997**.

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

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	MUR 3620 Conciliation Agreement Inquiry
Democratic Senatorial Campaign)	
Committee and Paul Johnson, as)	MUR 4490
Treasurer, et al.)	MUR 4502

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on March 25, 1997, do hereby certify that the Commission decided by a vote of 4-1 to take the following actions with respect to the above-captioned matters:

1. Take no further action in the conciliation agreement inquiry in MUR 3620.

2. Approve the letters in the conciliation agreement inquiry in MUR 3620 as recommended in the General Counsel's March 13, 1997 report.

3. Close the conciliation agreement inquiry in MUR 3620 and close the file.

4. Take no action in MUR 4490 and MUR 4502.

5. Approve the letters in MUR 4490 and MUR 4502 as recommended in the General Counsel's March 13, 1997 report.

(continued)

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6. Close the files in MUR 4490 and MUR 4502.

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

Attest:

3-25-97
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 10, 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Benjamin L. Ginsberg, Esquire
PATTON BOGGS, L.L.P.
2550 M Street, N.W.
Washington, D.C. 20037-1350

RE: MURs 4490 and 4502

Dear Mr. Ginsberg:

On October 1 and October 8, 1996, the Federal Election Commission received complaints from your client, John Heubusch, Executive Director of the National Republican Senatorial Committee, alleging certain violations of the Federal Election Campaign Act of 1971, as amended, ("Act").

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the respondents. Accordingly, the Commission closed its files in these matters on March 25, 1997. This matter will become part of the public record within 30 days.

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

Sincerely,

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Enclosure

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 10, 1997

Robert F. Bauer, Esquire
Marc E. Elias, Esquire
PERKINS COIE
607 14th Street, N.W.
Washington, D.C. 20005

RE: MUR 4502
Democratic Senatorial Campaign Committee; Paul Johnson, as treasurer; Docking for U.S. Senate; William R. Docking, as treasurer; and Jill Ann Sadowsky Docking;

Dear Messrs. Bauer and Elias:

On October 10, 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 has determined to exercised its prosecutorial discretion and to take no action against your clients. Accordingly, the Commission closed its file on this matter on March 25, 1997.

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.

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

Sincerely,

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Enclosure

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4502

DATE FILMED 5-16-97 CAMERA NO. 4

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