

# HOGAN & HARTSON

JUL 2 1993

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June 30, 1993

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

## Re: Advisory Opinion Request

Dear Mr. Noble:

I am writing as counsel to the Tsongas Committee, Inc. ("the Committee") to request an advisory opinion pursuant to 2 U.S.C. § 437f(a)(1).

The Committee is the authorized campaign committee for former Senator Paul E. Tsongas' 1992 presidential candidacy. Since Senator Tsongas' withdrawal from the 1992 campaign, the Committee has been engaged in debt retirement and in the Federal Election Commission's audit process.

In June of 1992, the Committee advised the FEC of its discovery that its principal fundraising consultant had misappropriated a substantial amount of contributions intended for the Committee and also had engaged in other activities that appeared to violate the Federal Election Campaign Act. The FEC commenced an investigation of these circumstances, with the Committee's cooperation, as an adjunct to the ongoing audit process.

In late 1992, the Committee learned that the United States Department of Justice and the Internal Revenue Service had commenced a parallel investigation ("the DOJ investigation") into the same activities of the fundraising consultant, as well as into other acts without any relationship to the Tsongas campaign. As with the FEC investigation, the Committee sought to cooperate fully with the DOJ investigation, making a number of Committee personnel and

HOGAN & HARTSON

Lawrence M. Noble, Esq.  
June 30, 1993  
Page Two

Committee records available at the request of federal investigators. Although the Committee was never notified that it was a target of the DOJ investigation, the Committee considered it prudent to retain legal counsel to advise the Committee and its personnel during the course of the DOJ investigation. On February 19, 1993, the fundraising consultant was indicted by a federal grand jury on 46 counts, relating to mail fraud, money laundering, bank fraud, making false statements to the FEC, and violating the federal election laws. A superseding indictment was returned on June 4, 1993.

The law firm's services to the Committee were limited to matters related to the DOJ investigation and did not include advice to the Committee regarding its compliance with FECA. In addition, although the underlying facts of the fundraising consultant's activities are material to matters raised in the FEC audit process, separate counsel has been handling those matters as they relate to compliance and audit issues before the FEC.

The law firm has billed the Committee for its services in connection with the DOJ investigation. The Committee is aware that the FEC has issued a number of advisory opinions addressing whether particular legal services and/or money raised to defray them are considered to be contributions within the meaning of 11 CFR 100.7. See Advisory Opinions 1990-17, 1981-16, 1980-4, 1979-37. The Committee seeks an advisory opinion as to whether monies raised to defray the legal expenses in connection with the DOJ investigation as described above would be considered to be "contributions" and must comply with the limitations and prohibitions of FECA.

Please call me if any additional information is needed to consider this request. Thank you for your assistance.

Sincerely yours,

L. Anthony Sutin



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

July 8, 1993

L. Anthony Sutin  
Hogan & Hartson  
Columbia Square  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004-1109

Dear Mr. Sutin:

This refers to your letter dated June 30, 1993, on behalf of the Tsongas Committee, Inc. ("the Committee") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to donations to defray the Committee's legal expenses in connection with DOJ and IRS investigations of the activities of a fundraising consultant.

The Act authorizes the Commission to issue an advisory opinion in response to a "complete written request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. §437f(a). Commission regulations explain that such a request "shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made." 11 CFR 112.1(c).

In view of these requirements, this office will need clarification of a few points.

You have stated that "[t]he law firm's services to the Committee were limited to matters related to the DOJ investigation and did not include advice to the Committee regarding its compliance with FECA." You also state that separate counsel has been handling the pertinent matters as they relate to compliance and audit issues before the Commission. Our records indicate, however, that your firm and you have engaged in responding to audit findings at various stages. Please clarify what you mean by "the law firm" and further explain, with specificity, what you mean by separate counsel handling compliance and audit matters before the Commission. Your response should include, but not be limited to, how legal services for the DOJ investigation have been separated from services with respect to matters before the Commission.

Please also state the sections of Federal election law on which the grand jury has indicted the fundraiser. State

also whether the mail fraud and money laundering counts pertained to fundraising and disbursement activities with respect to the Tsongas campaign (e.g., as to loans and other sources of funds for the Committee, and use of campaign funds).

Upon receiving your responses to the above questions, this office and the Commission will give further consideration to your inquiry as an advisory opinion request. If you have any questions concerning the advisory opinion process or this letter, please contact the undersigned.

Sincerely,

Lawrence M. Noble  
General Counsel

BY:

  
N. Bradley Litchfield  
Associate General Counsel

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July 9, 1993

N. Bradley Litchfield, Esq.  
Associate General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Mr. Litchfield:

ADR 1993-15

I am writing in response to your letter of July 8, 1993 concerning the advisory opinion request submitted on behalf of The Tsongas Committee, Inc.

"The law firm" referred to in my June 30 letter is the Boston firm of Foley, Hoag & Eliot. The legal expenses in question charged the Committee by that firm relate solely to the DOJ investigation. Foley, Hoag will not represent the Committee in connection with the response to FEC audit findings, compliance matters before the commission or, indeed, in seeking this advisory opinion. Rather, such representation has been undertaken by me. While there may be some factual overlap in the issues raised by the DOJ investigation and FEC compliance matters, the legal issues and procedural context are distinct.

In response to your inquiry concerning details of the indictment, I have enclosed a copy for your review.

Please let me know if you have any additional questions.

Sincerely,

L. Anthony Sutin

Enclosure

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA ) CRIMINAL NO. 93-10056-T  
)  
v. ) VIOLATIONS:  
)  
NICHOLAS A. RIZZO, JR. )  
) 18 U.S.C. §§1341 and 1346  
) (Mail Fraud)  
) 18 U.S.C. §1956 (Financial  
) Transactions With Proceeds  
) of Illegal Activity)  
) 18 U.S.C. §1344 (Bank Fraud)  
) 18 U.S.C. §1001 (False Statements  
) to the Federal Election Commission)  
) 2 U.S.C. §§441a(a)(1)(A) and  
) 437(g)(d) (Violating Federal  
) Campaign Donation and Loan Limits)  
) 18 U.S.C. §2 (Aiding and Abetting)  
) 18 U.S.C. §982 (Criminal Forfeiture)

SUPERSEDING INDICTMENT

THE GRAND JURY CHARGES:

GENERAL ALLEGATIONS

1. At all times material to this Superseding Indictment, Nicholas A. Rizzo, Jr. (hereinafter "defendant Rizzo") was a resident of Andover, Massachusetts. Since September 13, 1977, defendant Rizzo has owned and operated Benco Consulting and Marketing, Inc. (hereinafter "Benco"), a business consulting firm located in Andover, Massachusetts.

2. In or about March 1991, Paul Tsongas formed an organization of individuals to assist him in seeking election as President of the United States in November 1992.

3. On March 7, 1991, the Tsongas Committee, Inc. (hereinafter "the Committee") was incorporated under the laws of the Commonwealth of Massachusetts. On March 18, 1991, the

Committee registered with the Federal Election Commission (hereinafter "FEC") in Washington, D.C.

4. The FEC is the agency of the United States responsible for enforcement of the campaign reporting requirements of the Federal Election Campaign Act (hereinafter "the Act") and for detection, investigation, and institution of enforcement action against those violating the Act.

5. During 1991 and early 1992, defendant Rizzo was the chief fundraiser for the Committee. Defendant Rizzo's responsibilities on behalf of the Committee included national fundraising, receiving and accounting for campaign contributions, assuring compliance with the Act, and acting as a liaison with the FEC. As such, defendant Rizzo had the responsibility to work honestly and without violating election laws or other laws in the course of his duties on behalf of the candidate, Paul Tsongas, and the Committee. Defendant Rizzo had an obligation to act honestly and lawfully in the course of raising and expending funds in furtherance of his role as chief fundraiser and finance manager for the Committee.

6. Defendant Rizzo had substantial experience as a fundraiser in federal elections, having acted as chief fundraiser and finance manager for Paul Tsongas's campaigns for the United States House of Representatives in 1974 and 1976 and the United States Senate in 1978, and as a fundraiser for the presidential campaigns of former President Jimmy Carter in 1980, former Vice President Walter Mondale in 1984, and Congressman Richard

Gephardt in 1988. Defendant Rizzo also served as Assistant Treasurer for the Democratic National Committee during the early 1980's.

7. The Act, in particular, 2 U.S.C. §441a(a), and related federal regulations (11 CFR §100.7(a)(1)(iii)) prohibit and render illegal the making of contributions or loans to any federal candidate that exceed \$1,000 in connection with any election (primary or general).

8. A federal regulation under the Act (11 CFR §9033.2(b)(3)) allows presidential campaign committees to obtain campaign matching funds once the campaign has received \$5,000 in contributions in each of 20 states. Once a campaign qualifies for matching funds, it is entitled to receive matching funds from the United States Treasury of up to \$250 per campaign contribution. Therefore, for any contribution of \$250 or less, the campaign is entitled to matching funds for the entire contribution. For contributions over \$250, the campaign is entitled to matching funds of \$250 per contribution.

9. The Act, in particular, 2 U.S.C. §432(c), requires a campaign committee's treasurer to keep records of all contributions and loans to the Committee. The Act, 2 U.S.C. §434a(3), also requires campaign committees to file periodic reports -- monthly during an election year in which more than \$100,000 is projected, and monthly or quarterly, at the committee's option, during a non-election year -- containing a true and accurate accounting of campaign contributions and loans.

COUNTS ONE TO EIGHT

(Mail Fraud - 18 U.S.C. §§1341 and 1346)

The Grand Jury further charges that:

1. The Grand Jury realleges and incorporates by reference the General Allegations section of this Superseding Indictment as if fully set forth in these counts of the Superseding Indictment.

**THE SCHEME TO DEFRAUD**

2. Beginning in or about March 1991 and continuing through in or about the date of this Superseding Indictment, in the District of Massachusetts and elsewhere, defendant

**NICHOLAS A. RIZZO, JR.**

knowingly and willfully devised, intended to devise, and executed a scheme and artifice to defraud by means of false and fraudulent pretenses, representations, and promises, well knowing at the time that the pretenses, representations, and promises were false and fraudulent when made:

a. and to obtain money and property from the Committee, numerous individuals who attempted to make campaign contributions to the Committee, and several individuals who attempted to make substantial loans to the Committee;

b. and to deprive the Committee and Paul Tsongas of defendant Rizzo's loyal, faithful, and honest services as the chief fundraiser and finance manager of the Committee.

**MEANS, METHODS, AND OBJECTIVES OF THE SCHEME**

**A. Theft of Campaign Contributions**

3. It was part of the scheme that on March 8, 1991, defendant Rizzo, without the knowledge or authorization of other members of the Committee, opened a checking account at the Andover Bank (hereinafter "the undisclosed Andover Committee account") under the name, "The Tsongas Committee". Defendant Rizzo opened the account with his own social security number rather than the employer identification number of the Committee. Thereafter, at all times material to this Superseding Indictment, defendant Rizzo alone had signature authority on the account. On March 11, 1991, the Committee opened a checking account at Bay Bank Middlesex in Andover, Massachusetts. Defendant Rizzo did not have signature authority on this account, which was the Committee's regular operating account during 1991 and 1992.

4. It was further a part of this scheme that in 1991 and 1992, defendant Rizzo maintained and controlled a Post Office box in Andover, Massachusetts, where he received contributions to the Committee. During 1991 and January 1992, defendant Rizzo diverted approximately \$181,000 in individual campaign contributions intended for the Tsongas campaign into the undisclosed Andover Committee account.

5. It was further a part of the scheme that defendant Rizzo actively concealed from the Committee the \$181,000 in campaign contributions that he deposited in the undisclosed Andover Committee account. Because of defendant Rizzo's active

concealment, the Committee failed to include the \$181,000 as campaign contributions in its reports disclosing Committee contribution receipts to the FEC. Further, as a result of the non-disclosure of the \$181,000 in contributions, the Committee could not and did not receive substantial matching funds for those contributions that it was legally entitled to receive, and those who contributed did not receive the benefit of having their contributions matched by federal funds.

6. It was further a part of the scheme that between March 12, 1991 and the spring of 1992, defendant Rizzo spent approximately \$155,000 of the \$181,000 on his own personal expenses.

B. Solicitation of Illegal Loans

7. It was further a part of the scheme that on or about March 11, 1991, defendant Rizzo solicited and received a \$100,000 loan from Lawrence Ansin to the Committee. Defendant Rizzo told Lawrence Ansin that the loan was for campaign expenses, was legal, and would be repaid. Defendant Rizzo deposited the \$100,000 in loan proceeds into the undisclosed Andover Committee account and spent the \$100,000 on his own personal expenses. The loan has not been repaid.

8. It was further a part of the scheme that during 1991 and 1992, defendant Rizzo solicited and received three loans from Elkin McCallum: a \$100,000 loan on or about August 13, 1991; a \$50,000 loan on or about October 21, 1991; and a \$100,000 loan on or about February 11, 1992. In soliciting each of the loans,

defendant Rizzo falsely represented to Elkin McCallum that the loan proceeds would go to benefit the Committee, that the loans were legal, and that the loans would be repaid in a short period of time. Defendant Rizzo deposited the two 1991 loans, totalling \$150,000, in the undisclosed Andover Committee account, and deposited the \$100,000 1992 loan directly into his personal account at BayBank Middlesex. Defendant Rizzo spent the \$250,000 in loan proceeds on his own personal expenses. None of the loans have been repaid.

9. It was further a part of the scheme that during 1991 and 1992, defendant Rizzo solicited and received six loans from Anastasios Kalogianis: a \$10,000 loan on or about September 10, 1991; a \$15,000 loan on or about September 25, 1991; a \$24,000 loan on or about October 2, 1991; a \$35,000 loan on or about December 5, 1991; a \$65,000 loan on or about December 6, 1991; and a \$100,000 loan on or about January 27, 1992. In soliciting each of the loans, defendant Rizzo falsely represented to Anastasios Kalogianis that the loan proceeds would go to benefit the Committee, that the loans would be quickly repaid, and that the loans were legal. Defendant Rizzo deposited the proceeds of the five 1991 loans, totalling \$149,000, in the undisclosed Andover Committee account, and deposited the proceeds of the \$100,000 1992 loan into his personal account at Bay Bank Middlesex. Defendant Rizzo spent the \$249,000 in loan proceeds on his own personal expenses. None of the loans have been repaid.

10. It was further a part of the scheme that on or about September 27, 1991, defendant Rizzo solicited and received a \$10,000 loan from Peter Caloyerias. In soliciting the loan, defendant Rizzo falsely represented to Peter Caloyerias that the loan proceeds would go to the Committee, that the loan was legal, and that the loan would be repaid in February 1992. Defendant Rizzo deposited the proceeds of the \$10,000 loan in the undisclosed Andover Committee account and spent the \$10,000 in loan proceeds on his own personal expenses. The loan has not been repaid.

11. It was further a part of the scheme that during 1991, defendant Rizzo solicited and received two loans from Roger Trudeau: a \$60,000 loan on or about August 8, 1991, and a \$20,000 loan on or about September 10, 1991. In soliciting the loans, defendant Rizzo falsely represented to Roger Trudeau that the loan proceeds would go to the Committee, that the loans were legal, and that the loans would be repaid in a short period of time. Defendant Rizzo deposited the \$80,000 in loan proceeds in Benco accounts he controlled at Andover Bank and BayBank Middlesex. Defendant Rizzo repaid \$15,000 of the loans and spent the remaining \$65,000 on his own personal expenses. A balance of \$65,000 remains unpaid.

12. It was further a part of the scheme that on or about October 22, 1991, defendant Rizzo solicited and received a \$25,000 loan from Thomas Kelley. In soliciting the loan, defendant Rizzo falsely represented to Thomas Kelley that the

proceeds of the \$25,000 loan would go to benefit the Committee, that the loan was legal, and that the loan would be repaid in 45 to 60 days.. Defendant Rizzo deposited the \$25,000 in the undisclosed Andover Committee account and spent the \$25,000 in loan proceeds on his own personal expenses. The loan has not been repaid.

13. It was further a part of the scheme that on or about October 16, 1991, defendant Rizzo solicited and received a \$20,000 loan from Michael Spinelli. In soliciting the loan, defendant Rizzo falsely represented to Michael Spinelli that the proceeds of the loan would go to benefit the Committee and that the loan was legal. Defendant Rizzo deposited the proceeds of the loan in the undisclosed Andover Committee account and spent the \$20,000 in loan proceeds on his own personal expenses. This loan was later repaid.

14. It was further a part of the scheme that on or about December 4, 1991, defendant Rizzo solicited and received a \$60,000 loan from William Berg. In soliciting the loan, defendant Rizzo falsely represented to William Berg that the proceeds of the loan would go to benefit the Committee, that the loan was legal, and that the loan would be repaid quickly. Defendant Rizzo deposited the \$60,000 in the undisclosed Andover Committee account. Defendant Rizzo repaid \$30,000 of the loan and spent the balance on his own personal expenses. A balance of \$30,000 remains unpaid.

15. In total, defendant Rizzo fraudulently obtained loans in the amount of \$794,000 which he falsely represented to the individual lenders would be to the benefit of the Committee. Defendant Rizzo has repaid \$65,000 of the loans. The total amount of the fraudulently obtained loans that remains unpaid by defendant Rizzo is \$729,000.

C. False Billing, Double Billing, and Billing for Personal Expenditures

16. It was further a part of the scheme that defendant Rizzo fraudulently obtained money from the Committee during 1991 and 1992 by misrepresenting to the Committee that he had incurred campaign expenses that, in fact, he had not incurred.

17. For example, on or about January 2, 1992, defendant Rizzo caused Carla Degnan, his daughter, who was a Benco employee and a Committee member who had signatory authority on the Committee's regular BayBank account, to write a check to him on that account in the amount of \$42,000, when defendant Rizzo knew full well that he had not incurred expenses on behalf of the Committee to warrant such "reimbursement".

18. It was further a part of the scheme that defendant Rizzo billed the Committee for personal expenses including, among other things, expenses defendant Rizzo incurred at a women's clothing store and an adult entertainment center, which were not legally reimbursable by the campaign and did not relate to defendant Rizzo's obligation to assist the Committee.

19. It was further a part of the scheme that on numerous occasions defendant Rizzo "double billed" the Committee for

campaign expenses that the Committee already had paid. For example, early in 1992 defendant Rizzo sought over \$13,000 from the Committee in "reimbursement" for purportedly paying the Lafayette Hotel for goods and services in connection with a fundraising event at the hotel in or about March 1991, even though the bill had been paid by the Committee months earlier in 1991. In addition, on several occasions, defendant Rizzo caused the Committee to issue travel advance checks in the name of Steven Joncas with whom defendant Rizzo often travelled on campaign business. Defendant Rizzo took possession of the checks, forged Steven Joncas's name, and cashed them, keeping the proceeds for himself. Defendant Rizzo later sought reimbursement to himself in his own name from the Committee for the same travel expenses covered by the travel advance checks previously written in Steven Joncas's name and cashed by defendant Rizzo.

20. During 1991 and 1992, by double billing, submitting false bills, and billing the Committee for nonreimbursable personal expenditures, defendant Rizzo fraudulently obtained, or attempted to obtain, in excess of \$77,000 from the Committee to which he was not entitled.

**D. Expenditure Of Unlawfully Obtained Money**

21. By diverting campaign contributions to the undisclosed Andover Committee account, soliciting loans by false and fraudulent representations, and submitting double, false, and otherwise improper bills, defendant Rizzo obtained \$1,052,000, more or less, from the Committee, contributors to the Tsongas

campaign, and the individual loaners named in paragraphs 7 to 14 of this Count, to which he was not legally entitled.

22. During 1991 and 1992, defendant Rizzo expended the money he fraudulently obtained and diverted for his own personal benefit in several ways, including the following:

- a. he repaid personal loans to financial institutions and individuals, including those individuals referred to in Counts Ten to Sixteen of this Indictment;
- b. he paid gambling debts to "bookies" in Massachusetts and to casinos in Las Vegas, Nevada; Atlantic City, New Jersey; Ledyard, Connecticut; and San Juan, Puerto Rico;
- c. he made campaign contributions, including his own \$1,000 contribution to the Tsongas Committee;
- d. he made substantial cash payments to his business, Benco, greatly in excess of any legitimate reimbursements for work performed on behalf of the Tsongas Committee; and
- e. he paid personal living and entertainment expenses.

E. The Concealment and Cover-Up

23. In order to promote full disclosure of campaign financing and expenditures, Congress enacted reporting requirements in the Act concerning campaign fundraising, and established legal standards for appropriate handling of funds

raised in a campaign. At all times relevant to this Superseding Indictment, defendant Rizzo violated the requirements of Titles 2 and 26 of the United States Code concerning campaign finance that he was legally required to abide by, and that the Committee and its contributors had a right to expect defendant Rizzo to obey as the chief fundraiser and as a finance manager of the Committee.

24. As part of his effort to conceal his activity, defendant Rizzo failed or caused others to fail to forward contributions (2 U.S.C. §432(b) and 11 CFR §102.8) and to properly account for contributions to the Committee (2 U.S.C. §432(c) and 11 CFR §102.9). Defendant Rizzo also commingled campaign and personal funds (2 U.S.C. 432(a)(3) and 11 CFR §102.15), failed to properly deposit contributions (2 U.S.C. §432(h)(1) and 11 CFR §103.3), and caused false reports to be made to the FEC (2 U.S.C. §434(b) and 11 CFR §§104.3-104.11, and 26 U.S.C. §9042(c)).

25. As part of defendant Rizzo's efforts to conceal and cover up his fraud, he created and caused to be created false documents, and made false statements, including (a) written entries in the books and records of Berco that misrepresented the source of certain funds; (b) false and misleading note documents to those making loans to the Committee; (c) false personal and corporate federal income tax returns; (d) false statements made under oath to the FEC; and (e) numerous false statements to attorneys and those associated with the Committee's own investigation in an effort to explain his actions. In addition,

defendant Rizzo wrote checks and sent them to individuals from whom he had solicited illegal loans, knowing when he wrote and sent the checks that there were insufficient funds to cover those checks.

#### THE MAILINGS

26. For the purpose of executing the aforesaid scheme and artifice to defraud others of their right to honest services and for obtaining money by false and fraudulent pretenses, representations, and promises, and attempting to do so, in the District of Massachusetts and elsewhere, defendant

NICHOLAS A. RIZZO, JR.

knowingly, willfully, and unlawfully placed and caused to be placed in a Post Office or authorized depository for mail matter to be sent and delivered by the United States Postal Service and knowingly, willfully, and unlawfully caused to be delivered by mail according to directions thereon, the following items on the following dates:

<u>Count</u>	<u>Date of Mailing</u>	<u>Description</u>
1	6/19/91	Campaign contribution check from Ann Kneisel
2	3/25/91	Campaign contribution check from George Pearce
3	6/5/91	Campaign contribution check from Alan Geismer, Jr.
4	9/27/91	Loan check from Peter Caloyerias

5	2/5/92	Committee report to FEC
6	3/14/91	Campaign contribution check from Mary Wasserman
7	April 1992	Defendant Rizzo request for reimbursement to the Committee
8	3/11/91	Campaign contribution check from Patricia Campbell

All in violation of Title 18, United States Code, Sections  
1341 and 1346.

COUNT NINE

(Financial Transactions with Proceeds of Illegal Activity -  
18 U.S.C. §§1956(a)(1)(A)(i) and 2)

The Grand Jury further charges that:

1. The allegations contained in the General Allegations section of this Superseding Indictment are realleged and incorporated herein.
2. From in or about March 1991 until in or about April 1992, in the District of Massachusetts and elsewhere, defendant

**NICHOLAS A. RIZZO, JR.**

did conduct and cause to be conducted financial transactions involving the proceeds of mail fraud in violation of 18 U.S.C. §§1341 and 1346, that is, causing checks from various individuals and entities referred to in Counts One to Eight of this Superseding Indictment to be deposited in bank accounts controlled by defendant Rizzo and the proceeds retained by defendant Rizzo, knowing that the checks involved in such financial transactions represented the proceeds of unlawful activity and with the intent to promote the carrying on of such unlawful activity.

All in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i) and 2.

COUNTS TEN TO SEVENTEEN

(Bank Fraud - 18 U.S.C. §1344)

The Grand Jury further charges that:

1. The allegations contained in the General Allegations section of this Superseding Indictment are realleged and incorporated herein.

2. From in or about at least February 1988 until at least August 1991, defendant

NICHOLAS A. RIZZO, JR.

falsely represented to financial institutions that he was to receive substantial proceeds from real estate ventures, and falsely represented his income and liabilities.

3. On or about each of the dates set forth below, in connection with loans made by the financial institutions named below, in the District of Massachusetts and elsewhere, defendant

NICHOLAS A. RIZZO, JR.

did knowingly execute and induce the execution of a scheme and artifice to defraud and to obtain the money listed below owned by and under the custody and control of the federally insured financial institutions listed below, by means of false and fraudulent pretenses, representations, and promises, to wit, false and fraudulent representations concerning defendant Rizzo's assets, income, and liabilities:

<u>Count</u>	<u>Time Period Loans Made</u>	<u>Lender</u>	<u>Total Amount of Loans</u>
10	November 1989 to July 1991	Enterprise Bank and Trust Co.	\$ 50,000
11	March 1989 to March 1990	Lawrence Savings Bank	\$240,000
12	January 1989 to November 1990	Andover Bank	\$1,028,263
13	November 1988 to December 1990	BayBank Middlesex	\$155,000
14	November 1989 to August 1991	Medford Savings Bank	\$530,000
15	August 1990	New Heritage Bank	\$164,000
16	December 1989	Fleet Bank	\$ 77,200
17	February 1988 to February 1989	National Bank of Greece	\$100,000 ".
		<b>TOTAL</b>	<b><u>\$2,344,463</u></b>

All in violation of Title 18, United States Code, Sections 1344 and 2.

COUNTS EIGHTEEN TO THIRTY-THREE

~ (Violating Campaign Donation and Loan Limits -  
2 U.S.C. 55441(a)(1)(A) and 437(g)(d))

The Grand Jury further charges that:

1. The allegations contained in the General Allegations section and in Counts One to Eight of this Superseding Indictment are realleged and incorporated herein.

2. On or about the dates listed below, in the District of Massachusetts and elsewhere, defendant

**NICHOLAS A. RIZZO, Jr.**

knowingly and willfully caused loans to be made to the benefit of the Committee in amounts exceeding \$1,000, as listed below:

<u>Count</u>	<u>Agreement Date</u>	<u>Amount of Loan</u>	<u>Source of Loan</u>
18	3/11/91	\$100,000	Lawrence Ansin
19	8/8/91	\$ 60,000	Roger Trudeau
20	8/13/91	\$100,000	Elkin McCallum
21	9/10/91	\$ 10,000	Anastasios Kalogianis
22	9/10/91	\$ 20,000	Roger Trudeau
23	9/25/91 ..	\$ 15,000 ..	Anastasios Kalogianis ..
24	9/27/91	\$ 10,000	Peter Caloyerias
25	10/2/91	\$ 24,000	Anastasios Kalogianis
26	10/16/91	\$ 20,000	Michael Spinelli
27	10/21/91	\$ 50,000	Elkin McCallum
28	10/22/91	\$ 25,000	Thomas Kelley

29	12/4/91	\$ 60,000	
30	12/5/91	\$ 35,000	William Berg
31	12/6/91	\$ 65,000	Anastasios Kalogianis
32	1/27/92	\$100,000	Anastasios Kalogianis
33	2/11/92	\$100,000	Anastasios Kalogianis
	<b>TOTAL</b>	<b><u>\$794,000</u></b>	Elkin McCallum

All in violation of Title 2, United States Code, Sections 441(a)(1)(A) and 437(g)(d), and 11 CFR Section 100.7(a)(1).

COUNTS THIRTY-FOUR TO FORTY-THREE

(False Statements - 18 U.S.C. §§1001 and 2)

The Grand Jury further charges that:

1. The allegations contained in the General Allegations section and in Counts One to Eight of this Superseding Indictment are realleged and incorporated herein.

2. On or about the dates listed below, in the District of Massachusetts and elsewhere, defendant

**NICHOLAS A. RIZZO, JR.**

knowingly and willfully caused the Treasurer for the Committee to make false and fictitious statements and representations to the FEC concerning matters within the jurisdiction of the FEC; to wit, filing reports that did not accurately reflect certain conduct that was reportable under Title 2, United States Code, including (a) that illegal loans were made and caused to be made to the Committee; (b) that contributions had been made to the Committee in excess of the legally allowable limit; and (c) that improper expenditures had been made with campaign funds:

<u>Count</u>	<u>Date of Report</u>	<u>Period Covered</u>
34	2/12/92	7/1/91 - 9/30/91
35	2/5/92	10/1/91 - 12/31/91
36	2/24/92	1/1/92 - 1/31/92
37	3/23/92	2/1/92 - 2/29/92
38	4/23/92	3/1/92 - 3/31/92
39	5/26/92	4/1/92 - 4/30/92
40	6/23/92	5/1/92 - 5/31/92

41	7/24/92	6/1/92 - 6/30/92
42	8/24/92	7/1/92 - 7/31/92
43	9/21/92	8/1/92 - 8/31/92

All in violation of Title 18, United States Code, Sections 1001 and 2(b).

COUNT FORTY-FOUR

(False Statements - 18 U.S.C. §§1001 and 2)

The Grand Jury further charges that:

1. The allegations contained in the General Allegations section of this Superseding Indictment are realleged and incorporated herein.
2. Pursuant to its statutory authority, the FEC issued subpoenas to various persons and entities in connection with an audit of the Committee and required answers to certain questions pertaining to the audit during 1992.
3. On or about November 18, 1992, defendant Rizzo, through his attorney, submitted written answers to certain questions from the FEC which he signed under the pains and penalties of perjury.
4. On or about November 18, 1992, in the District of Massachusetts and elsewhere, defendant

**NICHOLAS A. RIZZO, JR.**

did willfully and knowingly make and use and cause to be made and used a false writing and document knowing it to contain a false, fictitious and fraudulent statement and entry as to material facts in a matter within the jurisdiction of the FEC, a department and agency of the United States, in that in his "Written Answers", made pursuant to the request of the FEC, defendant Rizzo was asked the questions and responded falsely, as indicated below:

**QUESTION:**

"List names and addresses of persons making loans, the proceeds of which were deposited into Account Number

02-00153879-7 212; identify the date and amount of each loan; and explain the circumstances surrounding the solicitation of each loan.

ANSWER:

Lawrence Ansin, Weston, Massachusetts, \$100,000  
Elkin McCallum, Tyngsboro, Massachusetts, \$250,000  
Michael Spinelli, Lowell, Massachusetts, \$20,000  
Tom Kelley, Portsmouth, New Hampshire, \$25,000  
Arthur Kalogianis, Salem, New Hampshire, \$249,000

I solicited the loans and issued, in some cases, promissory note(s) signed by me for repayment. The loans were to be used by me and repaid by me."

\* \* \*

QUESTION:

"List names and addresses of persons making any other loans to you, Maria Rizzo, or The Tsongas Committee, solicited on behalf of The Tsongas Committee; identify the date and amount of each loan; explain the circumstances surrounding the solicitation of each loan; and identify how the proceeds of these loans were used.

ANSWER:

None."

4. Defendant Rizzo then and there well knew and believed that said answers were false since in truth and in fact defendant Rizzo failed to disclose in his answers to the FEC that he had (a) solicited and obtained a loan on behalf of the Committee from Peter Caloyerias in the amount of \$10,000 which he deposited in Account Number 02-00153879-7 212; (b) solicited and obtained loans on behalf of the Committee from Roger Trudeau totalling \$80,000 which were deposited to Account Number 22-0508780 in the name, Benco Consulting and Marketing, Inc.; and (c) solicited and obtained a loan payable to the Committee from William Berg in the

amount of \$60,000 which was deposited in Account Number 02-00153879-7 212.

All in violation of Title 18 United States Code, Sections 1001 and 2.

COUNT FORTY-FIVE

(False Statements - 18 U.S.C. § 1001 and 2)

The Grand Jury further charges that:

1. The allegations contained in the General Allegations section of this Indictment are realleged and incorporated herein.
2. On or about November 18, 1992, in the District of Massachusetts and elsewhere, defendant

NICHOLAS A. RIZZO, JR.

did willfully and knowingly make and use and cause to be made and used a false writing and document knowing it to contain a false, fictitious, and fraudulent statement and entry as to material facts in a matter within the jurisdiction of the FEC, a department and agency of the United States, in that in his "Written Answers", made pursuant to the request of the FEC, defendant Rizzo was asked the following question and responded falsely, as indicated below:

QUESTION:

"Describe any contact you may have had with Steve Joncas of Lowell, Massachusetts, during your work with the Tsongas Committee. Explain any financial transactions you entered with Mr. Joncas."

ANSWER:

I had frequent contact with Steve Joncas. Mr. Joncas frequently accompanied me on a variety of volunteer assignments. Advance expense funds were issued to Mr. Joncas by The Committee with the full knowledge that I was to use the funds and I was responsible for the accounting of all expenditures of those funds."

3. Defendant Rizzo then and there well knew and believed that said answer was false since no responsible individuals associated with or representing the Committee in any way had knowledge that defendant Rizzo was to use or obtain any funds from the Committee relating to Steven Joncas.

All in violation of Title 18, United States Code, Section 1001 and 2(b).

COUNT FORTY-SIX

(Mail Fraud - 18 U.S.C. §1341)

The Grand Jury further charges that:

1. The allegations contained in the General Allegations section of this Superseding Indictment are realleged and incorporated herein.

**THE SCHEME TO DEFRAUD**

2. Beginning in or about 1990 and continuing through in or about 1991, in the District of Massachusetts and elsewhere, defendant

**NICHOLAS A. RIZZO, JR.**

knowingly and willfully devised, intended to devise, and executed a scheme and artifice to defraud NED Rockingham, L.P., of money or property, namely, at least \$10,000, by means of false and fraudulent pretenses, representations, and promises.

3. It was a part of the scheme that during 1990 and 1991 defendant Rizzo was retained as a political consultant by NED Rockingham, L.P., a limited partnership that was in the process of attempting to secure certain permits necessary to the development of the Rockingham Park Mall in Salem, New Hampshire.

4. It was further a part of the scheme that in October 1990 defendant Rizzo stated to a general partner of NED Rockingham, L.P., that the chairperson of the New Hampshire Republican Party had solicited a contribution to the New Hampshire Republican Party. Defendant Rizzo suggested that NED Rockingham, L.P. make a contribution to the New Hampshire Republican Party.

5. It was further a part of the scheme that before the general partners of NED Rockingham, L.P. decided whether to make a contribution, defendant Rizzo sent to them a "Benco" invoice and photocopy of the front of a check purportedly drawn on an account in the name of "Benco Consulting and Marketing, Inc.", along with a letter which indicated that Benco had already made a \$10,000 contribution to the "Voter Education Fund" of the "N.H. Republican Committee".

6. It was further a part of the scheme that defendant Rizzo told a general partner of NED Rockingham, L.P. that it would be preferable for defendant Rizzo to make the contribution to the "Voter Education Fund" on behalf of NED Rockingham, L.P.. Defendant Rizzo explained that if Benco made the contribution on behalf of NED Rockingham, L.P., then individuals with access to contributor lists would not be aware that NED Rockingham, L.P. had made the contribution and would not seek further contributions from the limited partnership.

7. It was further a part of the scheme that defendant Rizzo told NED Rockingham, L.P.'s general partners that he would inform the New Hampshire Republican Party chairperson that the \$10,000 contribution was actually made by NED Rockingham, L.P. so that NED Rockingham, L.P. would gain any benefit that might flow therefrom.

8. It was further a part of the scheme that defendant Rizzo's false and fraudulent pretenses, representations, and promises caused NED Rockingham, L.P. to deliver \$10,000 to

defendant Rizzo as reimbursement to him for purportedly making the \$10,000 contribution to the "Voter Education Fund" of the "N.H. Republican Committee".

9. It was further a part of the scheme that defendant Rizzo in fact never had the conversations he said he had with the head of the New Hampshire Republican party and never sent the \$10,000 check, a copy of which he sent to NED Rockingham, L.P., to any voter education fund or anyone else affiliated with the Republican Party in New Hampshire.

10. It was further a part of the scheme that defendant Rizzo never caused Benco's \$10,000 check, a copy of which he sent to NED Rockingham, L.P., to be cashed. Under New Hampshire state law, it is illegal for a political party to accept corporate contributions in excess of \$500, or corporate contributions in any amount.

11. On or about November 1, 1993, defendant Rizzo, for the purposes of executing the aforesaid scheme and artifice to defraud, placed or caused to be placed in an authorized depository for mail matter, and knowingly caused to be delivered by the United States Mail, a letter dated November 1, 1990 to a general partner of NED Rockingham, L.P., William H. McCabe, Jr., a Benco invoice dated November 1, 1990, and a photocopy of a Benco check in the amount of \$10,000.

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT FORTY-SEVEN

(Mail Fraud - 18 U.S.C. §1341)

The Grand Jury further charges that:

1. The allegations contained in the General Allegations section of this Superseding Indictment are realleged and incorporated herein.

**THE SCHEME TO DEFRAUD**

2. Beginning in or about 1985 and continuing through in or about May 1993, in the District of Massachusetts and elsewhere, defendant

**NICHOLAS A. RIZZO, JR.**

knowingly and willfully devised, intended to devise, and executed a scheme and artifice to defraud Anthony Silva, Jr. and Robert Macartney of money or property, namely, at least \$145,000, by means of false and fraudulent pretenses, representations, and promises.

3. It was a part of the scheme that in or about November 1985, defendant Rizzo received \$50,000 from Anthony Silva, Jr.

4. It was further a part of the scheme that on or about September 10, 1986, defendant Rizzo received \$50,000 from Anthony Silva, Jr.

5. It was further part of the scheme that in obtaining \$50,000 from Anthony Silva, Jr. in 1985, defendant Rizzo represented to Silva, among other things, that he would cause Silva's \$50,000 to be invested in a government subsidized real estate development in Nashua, New Hampshire called the Nashua

Plaza Housing Development, that Silva would be a limited partner in the project, and that the investment was for a seven year period at the end of which Silva's investment would be returned with interest and any gains in equity.

5. It was further a part of the scheme that in obtaining \$50,000 from Anthony Silva, Jr. in 1986, defendant Rizzo represented to Silva, among other things, that he would cause Silva's \$50,000 to be invested in a government subsidized real estate project in Northhampton, Massachusetts, that Silva would be a limited partner in the project, and that the investment was for a seven year period at the end of which Silva's investment would be returned with interest and any gains in equity.

7. It was further a part of the scheme that in or about 1987 or 1988, defendant Rizzo told Silva that the Nashua project was doing well and that Silva's equity in the project had increased significantly.

8. It was further a part of the scheme that during 1991 and 1992, defendant Rizzo repeatedly promised to furnish Anthony Silva, Jr. with documents evidencing Silva's investments in the Nashua and Northhampton projects.

9. It was further a part of the scheme that in or about February 1991, defendant Rizzo received \$45,000 from Robert Macartney.

10. It was further a part of the scheme that in obtaining \$45,000 from Robert Macartney in 1991, defendant Rizzo falsely represented to Macartney, among other things, that he would cause

Macartney's \$45,000 to be invested in a government subsidized real estate project, that Macartney would own one unit in the project for which other investors were paying \$50,000, that Macartney would be a limited partner in the project, and that after one year Macartney could retrieve his investment plus approximately 12% in interest, or leave his money in the project, whichever he preferred.

11. It was further part of the scheme that in or about 1992 and early 1993, when Anthony Silva, Jr. and Robert Macartney requested documentation evidencing their investments, defendant Rizzo furnished to them documents that he knew had no relevance to any investment he had made in limited partnerships or real estate developments on their behalf.

12. It was further a part of the scheme that defendant Rizzo repeatedly misled Anthony Silva, Jr. and Robert Macartney by misrepresenting to them that he had put their money into limited partnerships investing in government subsidized real estate projects.

13. It was further a part of the scheme that defendant Rizzo did not in fact cause the \$145,000 he obtained from Anthony Silva, Jr. and Robert Macartney to be put into limited partnerships investing in government subsidized real estate projects.

14. Sometime in or about 1992, defendant Rizzo, for purposes of executing the aforesaid scheme and artifice to defraud, placed or caused to be placed in an authorized depository for mail.

matter, and knowingly caused to be delivered by the United States Mail, a document entitled "Assisted Elderly Development Enterprises - A Massachusetts Limited Partnership Agreement And Certificate of Limited Partnership."

All in violation of Title 18, United States code, Sections 1341 and 2.

COUNT FORTY-EIGHT

(Criminal Forfeiture - 18 U.S.C. 5982(a)(1))

The Grand Jury further charges that:

1. The charges and allegations set forth in the General Allegations section and Counts One through Nine of the Superseding Indictment are realleged and incorporated herein.
2. Approximately \$1,052,000 was involved in defendant Rizzo's violation of Title 18, United States Code, Section 1956, as alleged in Count Nine.
3. Upon conviction of the violation alleged in Count Nine of this Superseding Indictment, defendant

NICHOLAS A. RIZZO, JR.

shall forfeit to the United States any and all property constituting and derived from proceeds defendant Rizzo obtained, directly or indirectly, as the result of such violations, including, but not limited to, the aforementioned \$1,052,000.

4. If, as a result of any action or omission of defendant Rizzo, any of the property described in paragraph 3 above:
  - (1) cannot be located upon the exercise of due diligence;
  - (2) has been transferred or sold to, or deposited with, a third person;
  - (3) has been placed beyond the jurisdiction of the court;
  - (4) has been substantially reduced in value; or
  - (5) has been commingled with other property which cannot be divided without difficulty;

then it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b)(1)(B), to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property, that is, \$1,052,000. Such other property includes, but is not limited to:

- a. the land, with all buildings, appurtenances and improvements thereon, located at 30 Hemlock Road, Andover, Massachusetts, as described in a deed to Nicholas and Maria Rizzo, recorded with the Essex County Registry of Deeds at Book 1192, Page 623;
- b. an office condominium located at One Elm Square, Andover, Massachusetts, as described in a deed to Maria A. Rizzo, trustee, Aede Family Trust, recorded with the Essex County Registry of Deeds, at Book 1721, Page 342.

All in violation of Title 18, United States Code, Sections 982(a) and (b).

COUNT FORTY-NINE

(Criminal Forfeiture - 18 U.S.C. §982(a)(2))

The Grand Jury further charges that:

1. The charges and allegations set forth in the General Allegations section and Counts Ten through Sixteen of this Superseding Indictment are realleged and incorporated herein.

2. From his engagement in the unlawful activities alleged in Counts Ten through Sixteen, in violation of 18 U.S.C. §1344, defendant

NICHOLAS A. RIZZO, JR.

obtained and derived, directly and indirectly, approximately \$2,344,463 in proceeds.

3. Upon conviction of the violations alleged in Counts Ten through Sixteen of this Superseding Indictment, defendant Rizzo shall forfeit to the United States any and all property constituting and derived from proceeds defendant Rizzo obtained, directly or indirectly, as the result of such violations, including, but not limited to, the aforementioned \$2,344,463.

4. If, as a result of any action or omission of defendant Rizzo, any of the property described in paragraph 3 above:

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third person;
- (3) has been placed beyond the jurisdiction of the court;
- (4) has been substantially reduced in value; or
- (5) has been commingled with other property which cannot be divided without difficulty;

then it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b)(1)(B), to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property, that is, \$2,344,463. Such other property includes, but is not limited to:

- a. the land, with all buildings, appurtenances and improvements thereon, located at 30 Hemlock Road, Andover, Massachusetts, as described in a deed to Nicholas and Maria Rizzo, recorded with the Essex County Registry of Deeds at Book 1192, Page 623;
- b. an office condominium located at One Elm Square, Andover, Massachusetts, as described in a deed to Maria A. Rizzo, trustee, Aede Family Trust, recorded with the Essex County Registry of Deeds, at Book 1721, Page 342.

All in violation of Title 18, United States Code, Sections 982(a)(2) and (b).

A TRUE BILL

ann b. ligums  
FOREPERSON OF THE GRAND JURY

Brian F. O'Connor  
ASSISTANT U.S. ATTORNEY

DISTRICT OF MASSACHUSETTS: JUNE 4, 1993 @ 12:44 pm

Returned into the District Court by Grand Jurors and filed.

Cathleen O'Day  
DEPUTY CLERK