8304041839

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 1526

Date Filmed 6/27/83 Camera No. --- 2

Cameraman BPC

FEDERAL ELECTION COMMISSION

internal advice memoranda

The above-described material was removed from this file pursuant to the following exemption provided in the Freedom of Information Act, 5 U.S.C. Section 552(b):

____	(1) Classified Information	____	(6) Personal privacy
____	(2) Internal rules and practices	____	(7) Investigatory files
✓	(3) Exempted by other statute	____	(8) Banking Information
____	(4) Trade secrets and commercial or financial information	____	(9) Well Information (geographic or geophysical)
✓	(5) Internal Documents		

Signed Michael Dymally

Date 5/16/83

FEC 9-21-77

83040411370

GCC#374

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(512) 476-7167

June 24, 1983

Mr. Danny L. McDonald
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

RE: MUR 1526
Marshall S. Cogan

Dear Mr. McDonald:

With the closing of the investigation concerning Marshall S. Cogan, I am writing to ensure that the Federal Election Commission's actions are not subject to misinterpretation and to highlight the important aspects of this case. In short, the record should indicate that Marshall S. Cogan only inadvertently and temporarily exceeded certain federal campaign finance limitations which are extremely difficult for an individual not familiar with federal law to interpret and apply.

Because of the technical and inadvertent nature of the actions of Mr. Cogan, and because Mr. Cogan voluntarily brought the matter to the Commission's attention, the FEC has decided to take no action against Mr. Cogan, impose no fine, and in general leave spotless Mr. Cogan's record with regard to federal campaign finance compliance. In fact, the Commission staff has informally indicated that Mr. Cogan's willingness to come forward and place all the facts before the Commission on his own initiative was commendable and is to be encouraged in other citizens.

There are significant facts which should be kept in mind in reviewing the nature of this case. First, it is very unlikely that the Commission would have discovered this matter had Mr. Cogan not come forward with the information. Second, Mr. Cogan voluntarily sought and received refunds for the contributions in question. Third, the Commission, by not taking any further action, or imposing any penalty against Mr. Cogan, implicitly supports Mr. Cogan's view that his actions did not constitute any significant breach of federal

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law. Fourth, the rules governing the computation of the yearly campaign finance limitations, the subject of the Cogan investigation, are extremely complicated and difficult to interpret.

The questions at issue were whether Mr. Cogan violated Sections 441a(a)(3) and 441(a)(1)(A) of the Federal Election Campaign Act by exceeding the allowable limits in the calendar years 1981 and 1982. The matter came to Mr. Cogan's attention in November, 1982. He immediately instructed his accountants and lawyers to review his political contributions in those years. During the audit, we discovered that he may have exceeded the annual federal contribution limit by $5,000 in 1981 and by $2,500 in 1982. We also discovered that he may have exceeded the limit on contributions to an individual candidate.

Once we made these determinations, Mr. Cogan immediately sought and obtained refunds of $5,000 from the U.S. Democratic Leadership Circle, $2,500 from the National PAC and $1,000 from the "Toby Moffet for U.S. Senate Committee." On December 2, 1982, I contacted the Commission on behalf of Mr. Cogan and disclosed the existence of a possible violation. The following day, I met with Commission staff to discuss the matter and determine the appropriate procedure for bringing Mr. Cogan into compliance with the Act. On December 12, 1982, I submitted to the Commission a full statement of the facts. Following the routine opening of a Matter Under Review and an initial investigation by the Commission's staff, the Commission terminated its investigation to this matter on May 2, 1983.

We believe that the above description accurately details the true nature of Mr. Cogan's recent efforts to comply with federal campaign finance laws. His conduct was exemplary, and we believe the record should so reveal.

Sincerely,

Edward Knight

Edward S. Knight

ESK:lsh

83040113

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1333 NEW HAMPSHIRE AVENUE, N.W.
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Mr. Kenneth Gross
General Counsel's Office
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

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OFFICE OF THE
COMMISSION SECRETARY

83 JUN 24 P 5: 08

June 24, 1983

Mr. Danny L. McDonald
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

83 JUN 27 A11: 32

RE: MUR 1526
Marshall S. Cogan

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Sincerely,

Edward Knight

Edward S. Knight

ESK:lsh

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83040411876

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Mr. Danny L. McDonald
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

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83 MAY 20 P 4: 43

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May 20, 1983

83 P2: 28

Kenneth A. Gross, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

RE: MUR 1526

Dear Mr. Gross:

Regarding the Commission's investigation of Marshall S. Cogan, I am requesting an extension of time beyond the thirty day limit set for public disclosure of the file in this matter. Specifically, we would like to renew our request that the file not be disclosed; alternatively, should the Commission or your office decide that the file will be made public, we request that the Commission place a statement in the record explaining that it terminated its investigation because Mr. Cogan's violation was inadvertent and de minimus in impact.

In any event, we are asking that any such record not be made public for a period of thirty days from the date on which we receive your response to our request that this matter not be disclosed.

As we explained in our correspondence of May 12, 1983, Mr. Cogan remains concerned about the possible effects of a public record on his future financial activities. Therefore, in the event that disclosure is made, we would like an opportunity to submit additional information for inclusion in the record and examine the documents to placed in the record. A thirty-day extension will give us sufficient time to prepare and submit further information.

Again, we appreciate your forbearance in this matter.

Sincerely,

Edward S. Knight

Edward S. Knight

ESK:lsh

cc: M. Dymersky

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RECEIVED A ... FEC
83 MAY 20 P 4:43

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(512) 476-7167

May 20, 1983

Kenneth A. Gross, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

RE: MUR 1526

Dear Mr. Gross:

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Again, we appreciate your forbearance in this matter.

Sincerely,

Edward S. Knight

Edward S. Knight

ESK:lsh

cc: M. Dymersky

830404113

FEC

83 MAY 28 P 4:43

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ATTORNEYS AT LAW
SUITE 400
1333 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20036

83040411875

Mike Dymersky
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

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AKIN, GUMP, STRAUSS, HAUER & FELD
1333 NEW HAMPSHIRE AVENUE, N.W.
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WASHINGTON, D. C. 20036

TO: Kenneth A. Gross, Esquire
General Counsel's Office
Federal Election Commission
1325 K Street, N.W.
Washington, D.C.

FIRST CLASS MAIL

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ATTORNEYS AT LAW
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1333 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20036

83 MAY 12 P 3: 11

Mr. Michael Dymersky
Federal Election Commission
1325 K Street, N.W.
Washington, D.C.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 2, 1983

Edward S. Knight, Esquire
Akin, Gump et al.
1333 New Hampshire Avenue, NW
Suite 400
Washington, D.C. 20036

Re: MUR 1526; Marshall S. Cogan

Dear Mr. Knight:

On February 17, 1983, the Commission found reason to believe that your client had violated 2 U.S.C. § 441a(a)(3), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above referenced MUR. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file as it pertains to your client. Accordingly, the file in this matter, numbered MUR 1526, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within ten days.

The Commission reminds you that by making contributions aggregating in excess of $25,000 per year for two successive years, your client nevertheless appears to have violated 2 U.S.C. § 441a(a)(3), and he should take immediate steps to insure that this activity does not occur in the future.

If you have any questions, please direct them to Michael Dymersky at (202)523-4057.

Sincerely,

Charles N. Steele
General Counsel

by: Kenneth A. Gross
Associate General Counsel

8304041190

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Edward S. Knight, Esquire
Akin, Gump *et al*.
1333 New Hampshire Avenue, NW
Suite 400
Washington, D.C. 20036

Re: MUR 1526; Marshall S. Cogan

Dear Mr. Knight:

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If you have any questions, please direct them to Michael Dymersky at (202)523-4057.

Sincerely,

Charles N. Steele
General Counsel

O.K. 4/27/83

by: Kenneth A. Gross
Associate General Counsel

8304041193

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1526
Marshall S. Cogan)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on April 27, 1983, the Commission decided by a vote of 5-0 to take the following actions in MUR 1526:

1. Take no further action with respect to Marshall S. Cogan.
2. Close the file.
3. Approve and authorize the sending of the notification letter as attached to the General Counsel's April 19, 1983 Report.

Commissioners Aikens, Elliott, McGarry, Harris and Reiche voted affirmatively in this matter; Commissioner McDonald did not cast a vote.

Attest:

4-27-83 Marjorie W Emmons

Date

Marjorie W. Emmons
Secretary of the Commission

Received in Office of Commission Secretary: 4-22-83, 1:54
Circulated on 48 hour tally basis: 4-25-83, 11:00

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SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

April 19, 1983

83 APR 22 P 1:54

In the Matter of	)	
	)	MUR 1526
Marshall S. Cogan	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On December 3, 1982, an attorney for Marshall S. Cogan ("Respondent") met with staff members to voluntarily disclose facts which appeared to constitute violations of 2 U.S.C. §§ 441a(a)(1)(A) and 441a(a)(3) by Respondent, and a violation of 2 U.S.C. § 441a(f) by the Toby Moffet for U.S. Senate Committee ("the Moffet Committee"). Respondent made $30,000 in aggregate contributions in 1981, and $28,500 in aggregate contributions in 1982, which included contributions of $3,000 in the aggregate to the Moffet Committee, which the Moffet Committee accepted. Before Commission action, Respondent sought and received refunds of all of the excessive amounts.

On February 17, 1983, the Commission determined that there was reason to believe that Respondent violated 2 U.S.C. § 441a(a)(1)(A) but decided to take no further action on that apparent violation. Reason to believe was also found that Respondent violated 2 U.S.C. § 441a(a)(3) by exceeding the annual contribution ceiling by $5,000 in 1981, and by $3,500 in 1982. While reason to believe that the Moffet Committee violated

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2 U.S.C. § 441a(f) was also found, the Commission decided to take no further action and close the file as to it. Therefore, this office has proceeded to investigate the only outstanding apparent violation -- the Section 441a(a)(3) violation by Respondent.

Notification of the Commission's action was sent on February 23, 1983, and the matter proceeded to the investigation stage. Respondent asked for an extension of time to respond to the finding, which was granted. On March 21, 1983, Respondent filed a written response to the Commission's determination, with this office. (See Attachment I). On March 30, 1983, Respondent's counsel once again met with OGC staff, to discuss the direction of the investigation, and to clarify any possible questions with regard to the facts of the matter.

II. ANALYSIS

Respondent Cogan violated 2 U.S.C. § 441a(a)(3) by making contributions in excess of the $25,000 limit in 1981 and 1982. However, after reviewing all of the facts in this matter it is recommended that the Commission take no further action and close the file.

Respondent voluntarily brought this matter to the Commission's attention when Respondent's counsel notified the Office of General Counsel of the possible violation. As a result of the Respondent coming forward, this MUR was opened. Prior to the opening of this MUR and prior to the Commission's investigation, Respondent sought to correct the violation by seeking and obtaining refunds totaling $5,000 for 1981 and $3,500 for 1982. Moreover, Respondent states that his making the excessive contributions was unintentional. Respondent has cooperated fully with the Office of General Counsel in this matter.

Respondent Cogan has attempted to voluntarily comply with enforcement of the Act. He brought this matter to the attention of the Commission and took steps to correct the violation by obtaining refunds for the amounts in violation of the Act. Accordingly, the Office of General Counsel recommends that the Commission not pursue this matter further.

III. RECOMMENDATIONS

1. Take no further action with respect to Marshall S. Cogan, and close the file;

2. Approve and authorize the sending of the attached notification letter.

83040411907

Charles N. Steele
General Counsel

April 22, 1983
Date

BY: Kenneth A. Gross
Kenneth A. Gross
Associate General Counsel

Attachments
1) Respondent's response
2) Proposed notification letter

Occ # 9718

83 MAR 21 P4:44

(1)

AKIN, GUMP, STRAUSS, HAUER & FELD

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March 21, 1983

RECEIVED

Danny L. McDonald
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

RE: MUR 1526
Marshall S. Cogan

Dear Mr. McDonald:

We have received notice of the Federal Election Commission's (the "Commission") finding reason to believe that Mr. Marshall S. Cogan violated 2 U.S.C. §441a(a)(3) and §441(a)(1)(A) of the Federal Election Campaign Act of 1971, as amended, by contributing $30,000 in 1981, $28,500 in 1982, and $3,000 in the aggregate to the Toby Moffett for U.S. Senate Committee in 1981 and 1982. We understand further that the Commission staff has recommended that no additional action be taken on the possible §444(a)(1)(A) violation, but did not make a recommendation on the alleged §441a(a)(3) violation. We have also reviewed the attached General Counsel's Factual and Legal Analysis, and respectfully recommend that any further action on the alleged §441a(a)(3) violation is unwarranted in light of the mitigating circumstances present in this case.

FACTS

As we noted in our correspondence of December 13, 1982 (enclosed), Mr. Cogan has made a a good faith effort to comply with the Commission's regulations restricting contributions to candidates for federal office (11 C.F.R. §110.5). Specifically, as soon as he discovered a possible violation, he initiated contacts with the Commission through counsel. Mr. Cogan succeeded in recovering all excessive contributions.1/ However, we note that,

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1/ *See* attached copies of cancelled checks.

Attachment I - (1)

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(2)

due to a clerical error, we reported that he received a $5,000.00 refund from the Democratic National Committee Services Corporation, attributable to 1981. In fact, Mr. Cogan received a refund in that amount for a 1981 contribution to the U.S. Senate Democratic Leadership Circle. Despite the error, however, Mr. Cogan is now within the §441a(a)(3) limits for 1981. These facts are undisputed by the Commission staff.

Further, we would like to stress the fact that Mr. Cogan alerted the Commission to the possible violations. He also actively sought to correct his mistake by requesting refunds before the Commission staff recommended that he do so. By any standard, these were exemplary actions.

SUMMARY OF ARGUMENT

Our recommendation that the Commission take no further action against the respondent in this MUR is based upon mitigating factors that proved to be decisive in previous Commission actions. First, the respondent voluntarily contacted the Commission. Second, he sought refunds of excessive contributions even before the Commission staff urged that he do so. Third, all excess amounts have been recovered. Fourth, the amounts in question did not affect to any measurable or significant degree a federal election. Fifth, in recommending that the Commission not act on the alleged §441(a)(1)(A) violation, the Commission staff recognized the existence of mitigating factors and provided a basis for making the same recommendation on the alleged §441a(a)(3) violation. Sixth, to impose a fine or take further action against this respondent would serve no useful purpose and may have a chilling effect upon individuals exercising their First Amendment rights in the future.

DISCUSSION

The respondent's voluntary efforts to resolve this matter should be considered by the Commission in determining whether to dismiss this MUR. In previous instances where it has implemented §441a(a)(3) and §437g(a)(5)(A), the Commission has treated respondents' voluntary efforts to comply with its regulations as a good faith act. Specifically, in MUR 375, a Commission staff memorandum stated that voluntary compliance as opposed to waiting for FEC action should be viewed as a mitigating factor.2/ MUR 375 involved respondents who exceeded the joint contribution

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2/ FEC staff memorandum dated April 4, 1979.

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Attachment I - (2)

(3)

limit by $48,000. They apparently did not obtain refunds before they notified the Commission of a probable violation. Although §437g(a)(5)(A) provides that the respondents in MUR 375 might have been fined $5,000, the Commission assessed a $1,000 fine. Consequently, the disposition of MUR 375 provides a basis for substantially reducing the maximum penalty allowed by law when a respondent has acted to alert the Commission to his or her possible violation.

Further, Mr. Cogan not only alerted the Commission of possible violations voluntarily but corrected his mistake immediately. Because he did so, to exact a penalty would be inconsistent with the disposition of prior cases. Specifically, in similar cases involving individual contributors, the fine has been equal to or less than the unrefunded amount of the excessive contribution. For example, MUR 920 concerned a §441a(a)(3) violation by a respondent who apparently failed to report excessive contributions before the Commission discovered them. The public record reveals that the Commission staff was unable to determine the exact amount of the overage. Nevertheless, the Commission accepted the respondent's figure of $1,450 in excessive contributions and levied the same amount in settlement of the charge against him. Similarly, the respondent in MUR 530 was found to have violated both §441a(a)(3) and §441a(a)(1)(B). Although he also failed to notify the Commission of $590 in excessive contributions, he was fined $100. In other words, respondents who did not immediately seek and receive complete refunds were fined either nominal sums or the unrefunded amounts.

We want to emphasize that the respondent in this matter recovered the excessive contributions before being urged to do so by the Commission staff. This fact should weigh heavily in the Commission's deliberations on this MUR.

In addition, we also want to emphasize the line of reasoning in previous Commission actions which looks to the impact of a violation on a federal election. Assuming hypothetically that the recipients of Mr. Cogan's excessive contributions received a measureable benefit from them, the economic value of that benefit was clearly _de minimus_. The $5,000 excess amount was returned after 30 months, the $2,500 excess amount after 9 months. The Toby Moffett contribution was returned after 8 months. In each instance, the recipient benefited from the use of the funds for a short period of time.3/ Therefore, the value received because of the respondent's violation was inevitably less than

---

3/ 26 U.S.C. §483 proposes a method for computing unstated interest. Alternatively, the prime rate might be used. Under either alternative, the economic benefit of Mr. Cogan's excessive contributions was less than $600.00.

Attachment I - (3)

(4)

the amount of his excessive conributions. In this regard, the negligible value of the sums involved in this case did not substantially affect a federal election.

Further, in light of the Commission staff recommendation that the Moffett matter be closed, we believe the other claim against Mr. Cogan should also be dismissed. Where contributions exceeded the allowable limit, the respondent recovered the excessive amounts. The facts surrounding his request and receipt of refunds were substantially the same in each incident under investigation.

As the Commission is aware, the regulatory provisions applicable to individual contributors are of relatively recent origin and remain largely unfamiliar to the public. In fact, even the most sophisticated among individual contributors generally have only a passing knowledge, if any, that a complex regulatory system exists. When one considers the variety of designated categories of potential recipients of contributions and the difficult aggregation rules, it is likely that inadvertent violations will occur. Consequently, the Commission may properly decline to take an action that would discourage the exercise of an important right and participation in a socially desirable activity.4/

Finally, we wish to emphasize that this MUR suggests that the excessive contributions were inadvertent. There is no evidence of a blatant, intentional violation.

To summarize:

1. the respondent voluntarily contacted the Commission concerning the alleged violations;

2. the respondent sought refunds of his excessive contributions before the Commission staff advised him to do so;

3. the excessive contributions were recovered;

4. the excessive contributions did not affect a federal election;

4/ See the statement of Hugh Scott, Senator from Pennsylvania before the Subcommittee on Privileges and Elections, House Committee on Rules and Administration, 92nd Congress (May 25, 1971): "The best interests of the United States are not served through restricting the political activities or its citizens. Rather, we should be encouraging the fullest participation of both."

Attachment I-(4)

5. the Commission staff failed to provide a basis for treating the alleged §441a(a)(3) violation differently than the §441(a)(1)(A) violation;

6. further action in this MUR may "chill" the future exercise of First Amendment rights.

Additional proceedings in this case will impose an undue burden on Mr. Cogan. As a businessman, he stands to suffer substantial harm as a result of this investigation and the attendant public record. Viewed as a whole, therefore, the facts in this MUR suggest a violation that is within a category of cases which the Commission has ample discretion to dismiss without further action.

Sincerely,

AKIN, GUMP, STRAUSS, HAUER & FELD

By: Edward S. Knight

Edward S. Knight
Joel Jankowsky, P.C.

:lsh

(6)

THE NATIONAL PAC 312

November 30 19 82 1-2/210

PAY TO THE ORDER OF MARSHALL S. COGAN $ 2,500.00

TWO THOUSAND, FIVE HUNDRED & 00/100-------------- DOLLARS

CHASE

The Chase Manhattan Bank, N.A.
410 Park Ave., N.Y., N.Y. 10022

FOR return contribution - 1982

⑆021000021⑆ 035 1 171822⑈ 0312

TREASURER

8 3 0 4 0 4 1 1 1 9 1 3

Attachment I - (6)

(7)

1229

.S. SENATE DEMOCRATIC LEADERSHIP CIRCLE
444 N. CAPITOL ST., NW.
WASHINGTON, D.C. 20001

3 Dec. 1982

15-120
540

THE ORDER OF Marshall S. Cogan $ 5,000.00

Five Thousand and no cents DOLLARS

D.C. National Bank ★★★ DISTRICT OF COLUMBIA NATIONAL BANK

Main Office
1801 K Street, N. W.
Washington, D.C. 20006

FOR Acct 5401 - 1981 contribution refund

⑈0000 1229⑈ ⑆05400 12041⑆ ⑈268290 7⑈

8 3 0 4 0 4 1 1 1 9

Attachment I - (7)

(8)

U.S. Senate Democratic Leadership Circle

Chairman
U.S. Sen. Alan Cranston
California

Co-Chairmen
U.S. Sen. Robert C. Byrd
West Virginia
U.S. Sen. Wendell H. Ford
Kentucky
U.S. Sen. Daniel K. Inouye
Hawaii
U.S. Sen. Henry M. Jackson
Washington
U.S. Sen. Edward M. Kennedy
Massachusetts
U.S. Sen. Russell B. Long
Louisiana

Executive Director
Theodore Waller

Finance Director
Barbara Taylor

Capitol Coordinator
Esther Coopersmith

file / FEC

December 3, 1982

Mr. Marshall S. Cogan
Chairman
GFI/Knoll International
153 East 53rd Street
New York, New York 10022

Dear Mr. Cogan:

Herewith, as requested by your secretary earlier in the week, our check in the amount of $5,000, being a refund of your 1981 contribution to the U.S. Senate Democratic Leadership Circle. This refund is to bring you into compliance with the federal contribution limits.

Sincerely,

Theodore Waller

TW/dg
Enclosure

8304041119

Attachment I - (8)

Toby Moffett
FOR UNITED STATES SENATE

(9)

December 10, 1982

Mr. Marshall Cogan
Knoll International
153 E 53rd Street
New York, New York 10022

Dear Mr. Cogan:

Earlier this week I returned a $1000.00 contribution to you after it was determined that you had contributed more than the legal limit allowed by the F.E.C. I have reviewed our records and now show contributions totalling $2000.00 from you, $1000.00 from your wife,Maureen, and $1000 from you son,Andrew. If your records show these same contributions, and you have an interest in contributing another $1000.00 to help pay off Toby's campaign debt, may I suggest another contribution from either your wife or your son.

I apologize for the error made by us in accepting your third contribution. We appreciate your generous support.

Sincerely,

Gaylord Bourne

Gaylord Bourne
Finance Director

83040411914

Attachment I - (9)

8 3 0 4 0 4 1 1 9 1 7

TOBY MOFFETT
FOR U.S. SENATE
425A FRANKLIN AVENUE
HARTFORD, CT 06114

655

12-7 19 82

51-57
119

PAY TO THE ORDER OF Marshall Cogan $ 1000.00

ONE THOUSAND 00/00 DOLLARS

CBT THE CONNECTICUT BANK AND TRUST COMPANY
WEST HARTFORD, CONNECTICUT

FOR REFUND - 1982 POLITICAL CONTRIBUTION

Michael Schaffer

⑈000655⑈ ⑆011900571⑆ 128394 4⑈

Attachment I - (10)

(10)

(11)

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Edward S. Knight, Esquire
Akin, Gump et al.
1333 New Hampshire Avenue, NW
Suite 400
Washington, D.C. 20036

Re: MUR 1526; Marshall S. Cogan

Dear Mr. Knight:

On February 17, 1983, the Commission found reason to believe that your client had violated 2 U.S.C. § 441a(a)(3), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above referenced MUR. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file as it pertains to your client. Accordingly, the file in this matter, numbered MUR 1526, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within ten days.

The Commission reminds you that by making contributions aggregating in excess of $25,000 per year for two successive years, your client nevertheless appears to have violated 2 U.S.C. § 441a(a)(3), and he should take immediate steps to insure that this activity does not occur in the future.

If you have any questions, please direct them to Michael Dymersky at (202)523-4057.

Sincerely,

Charles N. Steele
General Counsel

by: Kenneth A. Gross
Associate General Counsel

8 3 0 4 0 4 1 1 9 1 3

Attachment II - (1)

GCC#9885

MICHAEL A. SCHAFFER
25 NORTH BEACON STREET
WEST HARTFORD, CT 06105

RECEIVED OFFICE OF THE SECRETARY

83 APR 21 P 2:15

April 18, 1983

Mr. Daniel McDonald
Chairman
FEDERAL ELECTION COMMISSION
Washington, D. C. 20463

Dear Mr. McDonald:

I am in receipt of the letter dated February 23, 1983, which was forwarded by Ercole Labadia, former Treasurer of the Toby Moffett for U. S. Senate Committee, which cites the Committee for violating 2 U.S.C. 441a (f), a provision of the Federal Election Campaign Act of 1971.

Please forgive the tardiness in the response to the Federal Election Commission's findings; however, with the end of the campaign, the fact that I came on as Treasurer midway through the campaign, and the letter was sent to the previous treasurer, I did not receive your letter until late March. Since then, I have attempted to investigate the matter and to piece together an explanation of the error with respect to accepting a political contribution in excess of the maximum permitted under Federal Election Commission Statutes from Marshall S. Cogan.

It appears from our records that we inadvertently entered into our computer records the contribution from Marshall S. Cogan on 3/18/82 in the amount of $1,000. Thus, we believed when the computer run was made to update our files, that the campaign had only received a total of $2,000 from Marshall S. Cogan. However, upon further examination and corrections made later during the year, it became apparent to us that we had received $2,000 in March as opposed to the $1,000. Therefore, upon discovering the error, we returned to Mr. Cogan, at our own initiative before this matter was raised by the Federal Election Commission and without being approached by Mr. Cogan, a refund of $1,000 in December, 1982, in order to comply with the statutes of the Federal Election Campaign Act.

I would appreciate it if this letter could be made a part of the public record on this matter and, again, please forgive my tardiness in responding, since circumstances did not permit a more rapid response.

Yours truly,

Michael Schaffer

Michael A. Schaffer, Treasurer
Toby Moffett for U. S. Senate Committee

MAS/p

cc: Clif Leonhardt

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CBT THE CONNECTICUT BANK AND TRUST COMPANY
Constitution Plaza Hartford, Connecticut 06115

PRESORTED
FIRST-CLASS

CONN

8 3 0 4 0 4 1 1 9 2 0

Mr. Daniel McDonald
Chairman
FEDERAL ELECTION COMMISSION
Washington, D. C. 20463

GCC #9697

AKIN, GUMP, STRAUSS, HAUER & FELD
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1333 NEW HAMPSHIRE AVENUE, N.W.
SUITE 400
WASHINGTON, D.C. 20036
(202) 887-4000
TELEX 89-665
WRITER'S DIRECT DIAL NUMBER 887-4135

DALLAS OFFICE
2800 REPUBLICBANK DALLAS BUILDING
DALLAS, TEXAS 75201
(214) 655-2800

AUSTIN OFFICE
900 AMERICAN BANK TOWER
AUSTIN, TEXAS 78701
(512) 476-7167

March 18, 1983

83 MAR 18 P5: 03

Mr. Michael Dymersky
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

RE: MUR 1526
Marshall S. Cogan

Dear Mr. Dymersky:

Per Carolyn Gipson's telephone conversation with your office this afternoon, I am formally requesting an extension of the date on which we are required to respond to MUR 1526.

I would appreciate an extension on filing a response until Monday, March 21, 1983.

Sincerely,

Edward S. Knight

Edward S. Knight

ESK:lsh

8304041 1921

GUMP, STRAUSS, HAUER & FELD
ATTORNEYS AT LAW
SUITE 400
1333 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20036

8304041192

Mr. Michael Dymersky
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

MUR 1526 Gen #9759

RECEIVED FEC 83 MAR 21 P4:44

Akin, Gump, Strauss, Hauer & Feld
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1333 NEW HAMPSHIRE AVENUE, N.W.
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(214) 655-2800

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AUSTIN, TEXAS 78701
(512) 476-7167

March 21, 1983

Danny L. McDonald
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

RE: MUR 1526
Marshall S. Cogan

Dear Mr. McDonald:

We have received notice of the Federal Election Commission's (the "Commission") finding reason to believe that Mr. Marshall S. Cogan violated 2 U.S.C. §441a(a)(3) and §441(a)(1)(A) of the Federal Election Campaign Act of 1971, as amended, by contributing $30,000 in 1981, $28,500 in 1982, and $3,000 in the aggregate to the Toby Moffett for U.S. Senate Committee in 1981 and 1982. We understand further that the Commission staff has recommended that no additional action be taken on the possible §444(a)(1)(A) violation, but did not make a recommendation on the alleged §441a(a)(3) violation. We have also reviewed the attached General Counsel's Factual and Legal Analysis, and respectfully recommend that any further action on the alleged §441a(a)(3) violation is unwarranted in light of the mitigating circumstances present in this case.

FACTS

As we noted in our correspondence of December 13, 1982 (enclosed), Mr. Cogan has made a a good faith effort to comply with the Commission's regulations restricting contributions to candidates for federal office (11 C.F.R. §110.5). Specifically, as soon as he discovered a possible violation, he initiated contacts with the Commission through counsel. Mr. Cogan succeeded in recovering all excessive contributions.1/ However, we note that,

1/ See attached copies of cancelled checks.

8304011923

due to a clerical error, we reported that he received a $5,000.00 refund from the Democratic National Committee Services Corporation, attributable to 1981. In fact, Mr. Cogan received a refund in that amount for a 1981 contribution to the U.S. Senate Democratic Leadership Circle. Despite the error, however, Mr. Cogan is now within the §441a(a)(3) limits for 1981. These facts are undisputed by the Commission staff.

Further, we would like to stress the fact that Mr. Cogan alerted the Commission to the possible violations. He also actively sought to correct his mistake by requesting refunds before the Commission staff recommended that he do so. By any standard, these were exemplary actions.

SUMMARY OF ARGUMENT

Our recommendation that the Commission take no further action against the respondent in this MUR is based upon mitigating factors that proved to be decisive in previous Commission actions. First, the respondent voluntarily contacted the Commission. Second, he sought refunds of excessive contributions even before the Commission staff urged that he do so. Third, all excess amounts have been recovered. Fourth, the amounts in question did not affect to any measurable or significant degree a federal election. Fifth, in recommending that the Commission not act on the alleged §441(a)(1)(A) violation, the Commission staff recognized the existence of mitigating factors and provided a basis for making the same recommendation on the alleged §441a(a)(3) violation. Sixth, to impose a fine or take further action against this respondent would serve no useful purpose and may have a chilling effect upon individuals exercising their First Amendment rights in the future.

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DISCUSSION

The respondent's voluntary efforts to resolve this matter should be considered by the Commission in determining whether to dismiss this MUR. In previous instances where it has implemented §441a(a)(3) and §437g(a)(5)(A), the Commission has treated respondents' voluntary efforts to comply with its regulations as a good faith act. Specifically, in MUR 375, a Commission staff memorandum stated that voluntary compliance as opposed to waiting for FEC action should be viewed as a mitigating factor.2/ MUR 375 involved respondents who exceeded the joint contribution

2/ FEC staff memorandum dated April 4, 1979.

limit by $48,000. They apparently did not obtain refunds before they notified the Commission of a probable violation. Although §437g(a)(5)(A) provides that the respondents in MUR 375 might have been fined $5,000, the Commission assessed a $1,000 fine. Consequently, the disposition of MUR 375 provides a basis for substantially reducing the maximum penalty allowed by law when a respondent has acted to alert the Commission to his or her possible violation.

Further, Mr. Cogan not only alerted the Commission of possible violations voluntarily but corrected his mistake immediately. Because he did so, to exact a penalty would be inconsistent with the disposition of prior cases. Specifically, in similar cases involving individual contributors, the fine has been equal to or less than the unrefunded amount of the excessive contribution. For example, MUR 920 concerned a §441a(a)(3) violation by a respondent who apparently failed to report excessive contributions before the Commission discovered them. The public record reveals that the Commission staff was unable to determine the exact amount of the overage. Nevertheless, the Commission accepted the respondent's figure of $1,450 in excessive contributions and levied the same amount in settlement of the charge against him. Similarly, the respondent in MUR 530 was found to have violated both §441a(a)(3) and §441a(a)(1)(B). Although he also failed to notify the Commission of $590 in excessive contributions, he was fined $100. In other words, respondents who did not immediately seek and receive complete refunds were fined either nominal sums or the unrefunded amounts.

We want to emphasize that the respondent in this matter recovered the excessive contributions before being urged to do so by the Commission staff. This fact should weigh heavily in the Commission's deliberations on this MUR.

In addition, we also want to emphasize the line of reasoning in previous Commission actions which looks to the impact of a violation on a federal election. Assuming hypothetically that the recipients of Mr. Cogan's excessive contributions received a measureable benefit from them, the economic value of that benefit was clearly <u>de minimus</u>. The $5,000 excess amount was returned after 30 months, the $2,500 excess amount after 9 months. The Toby Moffett contribution was returned after 8 months. In each instance, the recipient benefited from the use of the funds for a short period of time.3/ Therefore, the value received because of the respondent's violation was inevitably less than

---

3/ 26 U.S.C. §483 proposes a method for computing unstated interest. Alternatively, the prime rate might be used. Under either alternative, the economic benefit of Mr. Cogan's excessive contributions was less than $600.00.

the amount of his excessive conributions. In this regard, the negligible value of the sums involved in this case did not substantially affect a federal election.

Further, in light of the Commission staff recommendation that the Moffett matter be closed, we believe the other claim against Mr. Cogan should also be dismissed. Where contributions exceeded the allowable limit, the respondent recovered the excessive amounts. The facts surrounding his request and receipt of refunds were substantially the same in each incident under investigation.

As the Commission is aware, the regulatory provisions applicable to individual contributors are of relatively recent origin and remain largely unfamiliar to the public. In fact, even the most sophisticated among individual contributors generally have only a passing knowledge, if any, that a complex regulatory system exists. When one considers the variety of designated categories of potential recipients of contributions and the difficult aggregation rules, it is likely that inadvertent violations will occur. Consequently, the Commission may properly decline to take an action that would discourage the exercise of an important right and participation in a socially desirable activity.4/

Finally, we wish to emphasize that this MUR suggests that the excessive contributions were inadvertent. There is no evidence of a blatant, intentional violation.

To summarize:

1. the respondent voluntarily contacted the Commission concerning the alleged violations;

2. the respondent sought refunds of his excessive contributions before the Commission staff advised him to do so;

3. the excessive contributions were recovered;

4. the excessive contributions did not affect a federal election;

4/ See the statement of Hugh Scott, Senator from Pennsylvania before the Subcommittee on Privileges and Elections, House Committee on Rules and Administration, 92nd Congress (May 25, 1971): "The best interests of the United States are not served through restricting the political activities or its citizens. Rather, we should be encouraging the fullest participation of both."

5. the Commission staff failed to provide a basis for treating the alleged §441a(a)(3) violation differently than the §441(a)(1)(A) violation;

6. further action in this MUR may "chill" the future exercise of First Amendment rights.

Additional proceedings in this case will impose an undue burden on Mr. Cogan. As a businessman, he stands to suffer substantial harm as a result of this investigation and the attendant public record. Viewed as a whole, therefore, the facts in this MUR suggest a violation that is within a category of cases which the Commission has ample discretion to dismiss without further action.

Sincerely,

AKIN, GUMP, STRAUSS, HAUER & FELD

By: Edward S. Knight

Edward S. Knight
Joel Jankowsky, P.C.

:lsh

83040411927

AKIN, GUMP, STRAUSS, HAUER & FELD
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
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900 AMERICAN BANK TOWER
AUSTIN, TEXAS 78701
(512) 476-7167

December 13, 1982

Kenneth A. Gross, Esquire
Associate General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

RE: Mr. Marshall S. Cogan
(Pre-MUR100)

Dear Mr. Gross:

This letter explains further the facts and circumstances surrounding Mr. Marshall S. Cogan's discovery of his possible violation of Federal Election Commission regulations (11 C.F.R. § 110.5). As you know, this discovery was initially described in my December 2, 1982 correspondence to you on behalf of Mr. Cogan.

In early November of this year, Mr. Cogan became concerned over the amount of his contributions to federal elections. 1/ Although he was not intimately familiar with federal election law at that time, he was interested in obtaining a better accounting of his contributions to candidates for federal office in 1981 and 1982. With this in mind, Mr. Michael Schwartzbard, Mr. Cogan's accountant, prepared a memorandum detailing the individuals to whom Mr. Cogan contributed and the amounts he had contributed in 1982.

This memorandum was sent to Mr. Cogan on the morning of November 12. According to Mr. Cogan, this memorandum was to be an item of discussion with his attorney, Mr. Alan Feld, at a meeting scheduled for November 18, 1982.

1/ In fact, Mr. Cogan explored the possibility of having his company form a Political Action Committee ("PAC") and requested information regarding PACs from this firm. On September 2, 1982, this information was sent to him. (See Enclosure A.)

On the morning of November 18, Ms. Helen Lento, Mr. Cogan's secretary, received a telephone call from a Mr. Greenspan, who stated that he was an associate of the newspaper journalist Jack Anderson. He told Ms. Lento that he was preparing background material for a possible story on the Federal Election Commission. According to Mr. Greenspan, Mr. Cogan's name had been identified as a major contributor to federal political candidates. In particular, Mr. Greenspan indicated that Mr. Cogan's two $1,000 contributions to the "Tom Lantos for Congress Committee" could constitute a possible violation of Federal election law. Mr. Greenspan asked Ms. Lento if Mr. Cogan wanted to comment upon the Lantos contributions. 2/

After Mr. Cogan was informed of the telephone call by Ms. Lento, and being unaware of the federal regulations in this area, Mr. Cogan immediately contacted Mr. Schwartzbard to ask him to determine whether there had in fact been a violation of the federal election law. At the time of this call, Mr. Feld was visiting the offices of Mr. Schwartzbard. Following the call, Mr. Feld, Mr. Schwartzbard and I began a vigorous investigation of Mr. Cogan's political contributions to federal candidates in 1981 and 1982. According to our preliminary findings, it appeared that Mr. Cogan had exceeded the annual federal contribution limitation by $5,000 in 1981 and $2,500 in 1982. Immediately thereafter, Mr. Cogan began efforts to recover the money which exceeded the annual limitations. On December 2, 1982, I submitted on behalf of Mr. Cogan a preliminary listing of the federal election contributions made by him during those years. When the December 2 list was submitted, Mr. Cogan had received a $2,500 refund from a 1982 contribution to the National PAC. A $5,000 refund of a "Democratic National Committee" contribution was received shortly thereafter.

We also advised Mr. Cogan that he may have exceeded the maximum allowable contribution to a candidate when he contributed a total of $3,000 to the "Toby Moffett for U.S. Senate Committee" in 1981 and 1982. Consequently, Mr. Cogan sought and received a $1,000 refund from the Toby Moffett Committee.

2/ These contributions did not constitute a violation because Mr. Lantos was a candidate in both a primary and general election (11 C.F.R. §110.1(a)).

Finally, after a complete audit of Mr. Cogan's 1981 expenditures, we discovered that we had failed to notify the Commission that Mr. Cogan had made a $500 contribution to the "Moynihan for Senate Committee" on September 18, 1981 and another $500 contribution to the same Committee on October 13, 1981. However, with the refund from the Moffett Committee, this additional $1,000 in contributions to a federal candidate should not cause Mr. Cogan to exceed the annual maximum of $25,000 in 1982. Enclosed for your information is a revised schedule of Mr. Cogan's federal political contributions in 1981 and 1982. (See Enclosure B.)

Mr. Cogan has made every effort to provide the Commission with full and complete information with regard to his federal political contributions. We stand ready to cooperate with the Commission in every possible way with regard to this matter.

Sincerely,

AKIN, GUMP, STRAUSS, HAUER & FELD

By: Edward S. Knight
Edward S. Knight

ESK:lsh
Enclosures

cc: Mr. Michael Dymersky

AKIN, GUMP, STRAUSS, HAUER & FELD

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1333 NEW HAMPSHIRE AVENUE, N.W.

SUITE 400

WASHINGTON, D.C. 20036

(202) 887-4000

TELEX 89-665

WRITER'S DIRECT DIAL NUMBER 887-4196

DALLAS OFFICE
00 REPUBLICBANK DALLAS BUILDING
DALLAS, TEXAS 75201
(214) 655-2800

AUSTIN OFFICE
900 AMERICAN BANK TOWER
AUSTIN, TEXAS 78701
(512) 476-7167

September 2, 1982

Messrs. Marshall S. Cogan and
Stephen C. Swid
Knoll International, Inc.
153 E. 53rd Street
Suite 5901
New York, New York 10022

Re: Political Action Committee

Dear Marshall and Stephen:

Earlier this week, Murray Rothenberg inquired as to the logistics of Knoll's establishing a Political Action Committee ("PAC"). At Alan Feld's suggestion, we are enclosing materials pertinent to your forming a PAC. Alan thought you might want to review the material prior to his calling you.

If we can answer any questions or provide you with additional information, please let us know.

Sincerely,

AKIN, GUMP, STRAUSS, HAUER & FELD

By: Michael S. Mandel
Edward S. Knight
Michael S. Mandel

cc: Alan D. Feld, P.C.
Murray Rothenberg

ATTACHMENT B
12/13/82

1981 CONTRIBUTIONS

Date		Amount
Contributions Given in and Attributed to 1981		
3/20	U.S. Senate Democratic Leadership Circle	$ 15,000.00
4/8	D.N.C. Services Corporation	5,000.00
6/18	Democratic Congressional Dinner	10,000.00
	Sub-Total	$ 30,000.00
	Refund from Democratic National Committee	(5,000.00)
	1981 Total	$ 25,000.00

Contributions Given in 1981 but Attributed to 1982

2/6	Tom Lantos for Congress	$ 1,000.00
3/18	Sen. Lloyd Bentsen Committee	1,000.00
9/18	Moynihan for Senate Committee	500.00
9/25	Tom Lantos for Congress	1,000.00
10/13	Moynihan for Senate Committee	500.00
11/5	People for Jackson	1,000.00
12/4	Toby Moffet Committee	1,000.00
	Sub-Total	$ 6,000.00
	Refund from Toby Moffet Committee	(1,000.00)
	Total	$ 5,000.00

1982 CONTRIBUTIONS

1/11	People for Jackson	$ 1,000.00
2/3	1982 Democratic Congressional	2,500.00
3/11	Lautenberg for U.S. Senate	1,000.00
3/11	Decisions '82 - H. Samuels	1,000.00
3/18	Toby Moffet for U.S. Senate	2,000.00
2/8	Committee to Re-Elect Kennedy	1,000.00
3/31	Citizens for Downey	250.00

1982 CONTRIBUTIONS (CONTINUED)

Date		Amount
4/2	Fund for Democratic Majority	$ 5,000.00
4/27	National PAC	5,000.00
5/10	Democrats for the '80's	1,000.00
5/12	People for John Heinz Committee	1,500.00
9/24	Yates for Congress Committee	250.00
9/28	Kennedy for Senator	1,000.00
	Sub-Total	$ 22,500.00
	1981 Contributions Attributed to 1982	5,000.00
	Sub-Total	$ 27,500.00
	Refund from National PAC	(2,500.00)
	1982 Total	$ 25,000.00

83040411933

THE NATIONAL PAC 312

November 30 19 82 1-2/210 35

PAY TO THE ORDER OF MARSHALL S. COGAN $ 2,500.00

TWO THOUSAND, FIVE HUNDRED & 00/100------------- DOLLARS

CHASE

The Chase Manhattan Bank, N.A.
410 Park Ave., N.Y., N.Y. 10022

FOR return contribution - 1982

TREASURER

⑆021000021⑆ 035 1 171822⑈ 0312

83040111193

U.S. SENATE DEMOCRATIC LEADERSHIP CIRCLE
444 N. CAPITOL ST., NW.
WASHINGTON, D.C. 20001

1229

3 Dec. 1982

15-120
540

PAY TO THE ORDER OF Marshall S. Cogan $ 5,000.00

Five thousand and no cents DOLLARS

D.C. National Bank ★★★
DISTRICT OF COLUMBIA NATIONAL BANK

FOR Acct 5401 - 1981 contribution refund

⑈00001229⑈ ⑆054001204⑆ ⑈268290 7⑈

8504011193

U.S. Senate Democratic Leadership Circle

Chairman
U.S. Sen. Alan Cranston
California

Co-Chairmen
U.S. Sen. Robert C. Byrd
West Virginia
U.S. Sen. Wendell H. Ford
Kentucky
U.S. Sen. Daniel K. Inouye
Hawaii
U.S. Sen. Henry M. Jackson
Washington
U.S. Sen. Edward M. Kennedy
Massachusetts
U.S. Sen. Russell B. Long
Louisiana

Executive Director
Theodore Waller

Finance Director
Barbara Taylor

Capitol Coordinator
Esther Coopersmith

830404119

file / FEC

December 3, 1982

Mr. Marshall S. Cogan
Chairman
GFI/Knoll International
153 East 53rd Street
New York, New York 10022

Dear Mr. Cogan:

Herewith, as requested by your secretary earlier in the week, our check in the amount of $5,000, being a refund of your 1981 contribution to the U.S. Senate Democratic Leadership Circle. This refund is to bring you into compliance with the federal contribution limits.

Sincerely,

Theodore Waller

TW/dg
Enclosure

444 North Capitol Street, N.W., Washington, D.C. 20001 (202) 224-2540

Authorized and paid for by U.S. Senate Democratic Leadership Circle

Toby Moffett
FOR UNITED STATES SENATE

December 10, 1982

Mr. Marshall Cogan
Knoll International
153 E 53rd Street
New York, New York 10022

Dear Mr. Cogan:

Earlier this week I returned a $1000.00 contribution to you after it was determined that you had contributed more than the legal limit allowed by the F.E.C. I have reviewed our records and now show contributions totalling $2000.00 from you, $1000.00 from your wife,Maureen, and $1000 from you son,Andrew. If your records show these same contributions, and you have an interest in contributing another $1000.00 to help pay off Toby's campaign debt, may I suggest another contribution from either your wife or your son.

I apologize for the error made by us in accepting your third contribution. We appreciate your generous support.

Sincerely,

Gaylord Bourne

Gaylord Bourne
Finance Director

33040411937

425A FRANKLIN AVENUE, HARTFORD, CONNECTICUT 06114 (203) 249-7671

8 3 0 4 0 4 1 1 9 3 8

TOBY MOFFETT
FOR U.S. SENATE
425A FRANKLIN AVENUE
HARTFORD, CT 06114

655

12-7 19 82

51-57
119

PAY TO THE ORDER OF Marshall Cogan $ 1000.00

ONE THOUSAND 00/00 DOLLARS

CBT THE CONNECTICUT BANK AND TRUST COMPANY
WEST HARTFORD, CONNECTICUT

FOR REFUND - 1982 POLITICAL CONTRIBUTION

Michael Schaffer

⑈000655⑈ ⑆011900571⑆ 120391 4⑈

83040411939

FIRST CLASS MAIL

AKIN, GUMP, STRAUSS, HAUER & FELD
1333 NEW HAMPSHIRE AVENUE, N.W.
SUITE 400
WASHINGTON, D. C. 20036

NON
Gov Bag

TO:

Mr. Mike Dymersky
General Counsel's Office
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

FIRST CLASS MAIL

Rec'd ... Occ # 9718
83 MAR 21 P4:44

AKIN, GUMP, STRAUSS, HAUER & FELD
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A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
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AUSTIN OFFICE
900 AMERICAN BANK TOWER
AUSTIN, TEXAS 78701
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March 21, 1983

RECEIVED

13

Danny L. McDonald
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

RE: MUR 1526
Marshall S. Cogan

Dear Mr. McDonald:

We have received notice of the Federal Election Commission's (the "Commission") finding reason to believe that Mr. Marshall S. Cogan violated 2 U.S.C. §441a(a)(3) and §441(a)(1)(A) of the Federal Election Campaign Act of 1971, as amended, by contributing $30,000 in 1981, $28,500 in 1982, and $3,000 in the aggregate to the Toby Moffett for U.S. Senate Committee in 1981 and 1982. We understand further that the Commission staff has recommended that no additional action be taken on the possible §444(a)(1)(A) violation, but did not make a recommendation on the alleged §441a(a)(3) violation. We have also reviewed the attached General Counsel's Factual and Legal Analysis, and respectfully recommend that any further action on the alleged §441a(a)(3) violation is unwarranted in light of the mitigating circumstances present in this case.

FACTS

As we noted in our correspondence of December 13, 1982 (enclosed), Mr. Cogan has made a a good faith effort to comply with the Commission's regulations restricting contributions to candidates for federal office (11 C.F.R. §110.5). Specifically, as soon as he discovered a possible violation, he initiated contacts with the Commission through counsel. Mr. Cogan succeeded in recovering all excessive contributions.1/ However, we note that,

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1/ *See* attached copies of cancelled checks.

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due to a clerical error, we reported that he received a $5,000.00 refund from the Democratic National Committee Services Corporation, attributable to 1981. In fact, Mr. Cogan received a refund in that amount for a 1981 contribution to the U.S. Senate Democratic Leadership Circle. Despite the error, however, Mr. Cogan is now within the §441a(a)(3) limits for 1981. These facts are undisputed by the Commission staff.

Further, we would like to stress the fact that Mr. Cogan alerted the Commission to the possible violations. He also actively sought to correct his mistake by requesting refunds before the Commission staff recommended that he do so. By any standard, these were exemplary actions.

SUMMARY OF ARGUMENT

Our recommendation that the Commission take no further action against the respondent in this MUR is based upon mitigating factors that proved to be decisive in previous Commission actions. First, the respondent voluntarily contacted the Commission. Second, he sought refunds of excessive contributions even before the Commission staff urged that he do so. Third, all excess amounts have been recovered. Fourth, the amounts in question did not affect to any measurable or significant degree a federal election. Fifth, in recommending that the Commission not act on the alleged §441(a)(1)(A) violation, the Commission staff recognized the existence of mitigating factors and provided a basis for making the same recommendation on the alleged §441a(a)(3) violation. Sixth, to impose a fine or take further action against this respondent would serve no useful purpose and may have a chilling effect upon individuals exercising their First Amendment rights in the future.

DISCUSSION

The respondent's voluntary efforts to resolve this matter should be considered by the Commission in determining whether to dismiss this MUR. In previous instances where it has implemented §441a(a)(3) and §437g(a)(5)(A), the Commission has treated respondents' voluntary efforts to comply with its regulations as a good faith act. Specifically, in MUR 375, a Commission staff memorandum stated that voluntary compliance as opposed to waiting for FEC action should be viewed as a mitigating factor.2/ MUR 375 involved respondents who exceeded the joint contribution

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2/ FEC staff memorandum dated April 4, 1979.

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limit by $48,000. They apparently did not obtain refunds before they notified the Commission of a probable violation. Although §437g(a)(5)(A) provides that the respondents in MUR 375 might have been fined $5,000, the Commission assessed a $1,000 fine. Consequently, the disposition of MUR 375 provides a basis for substantially reducing the maximum penalty allowed by law when a respondent has acted to alert the Commission to his or her possible violation.

Further, Mr. Cogan not only alerted the Commission of possible violations voluntarily but corrected his mistake immediately. Because he did so, to exact a penalty would be inconsistent with the disposition of prior cases. Specifically, in similar cases involving individual contributors, the fine has been equal to or less than the unrefunded amount of the excessive contribution. For example, MUR 920 concerned a §441a(a)(3) violation by a respondent who apparently failed to report excessive contributions before the Commission discovered them. The public record reveals that the Commission staff was unable to determine the exact amount of the overage. Nevertheless, the Commission accepted the respondent's figure of $1,450 in excessive contributions and levied the same amount in settlement of the charge against him. Similarly, the respondent in MUR 530 was found to have violated both §441a(a)(3) and §441a(a)(1)(B). Although he also failed to notify the Commission of $590 in excessive contributions, he was fined $100. In other words, respondents who did not immediately seek and receive complete refunds were fined either nominal sums or the unrefunded amounts.

We want to emphasize that the respondent in this matter recovered the excessive contributions before being urged to do so by the Commission staff. This fact should weigh heavily in the Commission's deliberations on this MUR.

In addition, we also want to emphasize the line of reasoning in previous Commission actions which looks to the impact of a violation on a federal election. Assuming hypothetically that the recipients of Mr. Cogan's excessive contributions received a measureable benefit from them, the economic value of that benefit was clearly de minimus. The $5,000 excess amount was returned after 30 months, the $2,500 excess amount after 9 months. The Toby Moffett contribution was returned after 8 months. In each instance, the recipient benefited from the use of the funds for a short period of time.3/ Therefore, the value received because of the respondent's violation was inevitably less than

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3/ 26 U.S.C. §483 proposes a method for computing unstated interest. Alternatively, the prime rate might be used. Under either alternative, the economic benefit of Mr. Cogan's excessive contributions was less than $600.00.

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the amount of his excessive conributions. In this regard, the negligible value of the sums involved in this case did not substantially affect a federal election.

Further, in light of the Commission staff recommendation that the Moffett matter be closed, we believe the other claim against Mr. Cogan should also be dismissed. Where contributions exceeded the allowable limit, the respondent recovered the excessive amounts. The facts surrounding his request and receipt of refunds were substantially the same in each incident under investigation.

As the Commission is aware, the regulatory provisions applicable to individual contributors are of relatively recent origin and remain largely unfamiliar to the public. In fact, even the most sophisticated among individual contributors generally have only a passing knowledge, if any, that a complex regulatory system exists. When one considers the variety of designated categories of potential recipients of contributions and the difficult aggregation rules, it is likely that inadvertent violations will occur. Consequently, the Commission may properly decline to take an action that would discourage the exercise of an important right and participation in a socially desirable activity.4/

Finally, we wish to emphasize that this MUR suggests that the excessive contributions were inadvertent. There is no evidence of a blatant, intentional violation.

To summarize:

1. the respondent voluntarily contacted the Commission concerning the alleged violations;

2. the respondent sought refunds of his excessive contributions before the Commission staff advised him to do so;

3. the excessive contributions were recovered;

4. the excessive contributions did not affect a federal election;

4/ *See* the statement of Hugh Scott, Senator from Pennsylvania before the Subcommittee on Privileges and Elections, House Committee on Rules and Administration, 92nd Congress (May 25, 1971): "The best interests of the United States are not served through restricting the political activities or its citizens. Rather, we should be encouraging the fullest participation of both."

5. the Commission staff failed to provide a basis for treating the alleged §441a(a)(3) violation differently than the §441(a)(1)(A) violation;

6. further action in this MUR may "chill" the future exercise of First Amendment rights.

Additional proceedings in this case will impose an undue burden on Mr. Cogan. As a businessman, he stands to suffer substantial harm as a result of this investigation and the attendant public record. Viewed as a whole, therefore, the facts in this MUR suggest a violation that is within a category of cases which the Commission has ample discretion to dismiss without further action.

Sincerely,

AKIN, GUMP, STRAUSS, HAUER & FELD

By: Edward S. Knight

Edward S. Knight
Joel Jankowsky, P.C.

:lsh

AKIN, GUMP, STRAUSS, HAUER & FELD
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December 13, 1982

Kenneth A. Gross, Esquire
Associate General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

RE: Mr. Marshall S. Cogan
(Pre-MUR100)

Dear Mr. Gross:

This letter explains further the facts and circumstances surrounding Mr. Marshall S. Cogan's discovery of his possible violation of Federal Election Commission regulations (11 C.F.R. § 110.5). As you know, this discovery was initially described in my December 2, 1982 correspondence to you on behalf of Mr. Cogan.

In early November of this year, Mr. Cogan became concerned over the amount of his contributions to federal elections. 1/ Although he was not intimately familiar with federal election law at that time, he was interested in obtaining a better accounting of his contributions to candidates for federal office in 1981 and 1982. With this in mind, Mr. Michael Schwartzbard, Mr. Cogan's accountant, prepared a memorandum detailing the individuals to whom Mr. Cogan contributed and the amounts he had contributed in 1982.

This memorandum was sent to Mr. Cogan on the morning of November 12. According to Mr. Cogan, this memorandum was to be an item of discussion with his attorney, Mr. Alan Feld, at a meeting scheduled for November 18, 1982.

1/ In fact, Mr. Cogan explored the possibility of having his company form a Political Action Committee ("PAC") and requested information regarding PACs from this firm. On September 2, 1982, this information was sent to him. (See Enclosure A.)

On the morning of November 18, Ms. Helen Lento, Mr. Cogan's secretary, received a telephone call from a Mr. Greenspan, who stated that he was an associate of the newspaper journalist Jack Anderson. He told Ms. Lento that he was preparing background material for a possible story on the Federal Election Commission. According to Mr. Greenspan, Mr. Cogan's name had been identified as a major contributor to federal political candidates. In particular, Mr. Greenspan indicated that Mr. Cogan's two $1,000 contributions to the "Tom Lantos for Congress Committee" could constitute a possible violation of Federal election law. Mr. Greenspan asked Ms. Lento if Mr. Cogan wanted to comment upon the Lantos contributions. 2/

After Mr. Cogan was informed of the telephone call by Ms. Lento, and being unaware of the federal regulations in this area, Mr. Cogan immediately contacted Mr. Schwartzbard to ask him to determine whether there had in fact been a violation of the federal election law. At the time of this call, Mr. Feld was visiting the offices of Mr. Schwartzbard. Following the call, Mr. Feld, Mr. Schwartzbard and I began a vigorous investigation of Mr. Cogan's political contributions to federal candidates in 1981 and 1982. According to our preliminary findings, it appeared that Mr. Cogan had exceeded the annual federal contribution limitation by $5,000 in 1981 and $2,500 in 1982. Immediately thereafter, Mr. Cogan began efforts to recover the money which exceeded the annual limitations. On December 2, 1982, I submitted on behalf of Mr. Cogan a preliminary listing of the federal election contributions made by him during those years. When the December 2 list was submitted, Mr. Cogan had received a $2,500 refund from a 1982 contribution to the National PAC. A $5,000 refund of a "Democratic National Committee" contribution was received shortly thereafter.

We also advised Mr. Cogan that he may have exceeded the maximum allowable contribution to a candidate when he contributed a total of $3,000 to the "Toby Moffett for U.S. Senate Committee" in 1981 and 1982. Consequently, Mr. Cogan sought and received a $1,000 refund from the Toby Moffett Committee.

2/ These contributions did not constitute a violation because Mr. Lantos was a candidate in both a primary and general election (11 C.F.R. §110.1(a)).

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Finally, after a complete audit of Mr. Cogan's 1981 expenditures, we discovered that we had failed to notify the Commission that Mr. Cogan had made a $500 contribution to the "Moynihan for Senate Committee" on September 18, 1981 and another $500 contribution to the same Committee on October 13, 1981. However, with the refund from the Moffett Committee, this additional $1,000 in contributions to a federal candidate should not cause Mr. Cogan to exceed the annual maximum of $25,000 in 1982. Enclosed for your information is a revised schedule of Mr. Cogan's federal political contributions in 1981 and 1982. (See Enclosure B.)

Mr. Cogan has made every effort to provide the Commission with full and complete information with regard to his federal political contributions. We stand ready to cooperate with the Commission in every possible way with regard to this matter.

Sincerely,

AKIN, GUMP, STRAUSS, HAUER & FELD

By: Edward S. Knight
Edward S. Knight

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ESK:lsh
Enclosures

cc: Mr. Michael Dymersky

ATTACHMENT A

AKIN, GUMP, STRAUSS, HAUER & FELD
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1333 NEW HAMPSHIRE AVENUE, N.W.
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AUSTIN, TEXAS 78701
(512) 476-7167

September 2, 1982

Messrs. Marshall S. Cogan and
Stephen C. Swid
Knoll International, Inc.
153 E. 53rd Street
Suite 5901
New York, New York 10022

Re: Political Action Committee

Dear Marshall and Stephen:

Earlier this week, Murray Rothenberg inquired as to the logistics of Knoll's establishing a Political Action Committee ("PAC"). At Alan Feld's suggestion, we are enclosing materials pertinent to your forming a PAC. Alan thought you might want to review the material prior to his calling you.

If we can answer any questions or provide you with additional information, please let us know.

Sincerely,

AKIN, GUMP, STRAUSS, HAUER & FELD

By: Michael S. Mandel
Edward S. Knight
Michael S. Mandel

cc: Alan D. Feld, P.C.
Murray Rothenberg

ATTACHMENT B
12/13/82

1981 CONTRIBUTIONS

Date		Amount
Contributions Given in and Attributed to 1981		
3/20	U.S. Senate Democratic Leadership Circle	$ 15,000.00
4/8	D.N.C. Services Corporation	5,000.00
6/18	Democratic Congressional Dinner	10,000.00
	Sub-Total	$ 30,000.00
	Refund from Democratic National Committee	(5,000.00)
	1981 Total	$ 25,000.00
Contributions Given in 1981 but Attributed to 1982		
2/6	Tom Lantos for Congress	$ 1,000.00
3/18	Sen. Lloyd Bentsen Committee	1,000.00
9/18	Moynihan for Senate Committee	500.00
9/25	Tom Lantos for Congress	1,000.00
10/13	Moynihan for Senate Committee	500.00
11/5	People for Jackson	1,000.00
12/4	Toby Moffet Committee	1,000.00
	Sub-Total	$ 6,000.00
	Refund from Toby Moffet Committee	(1,000.00)
	Total	$ 5,000.00

1982 CONTRIBUTIONS

1/11	People for Jackson	$ 1,000.00
2/3	1982 Democratic Congressional	2,500.00
3/11	Lautenberg for U.S. Senate	1,000.00
3/11	Decisions '82 - H. Samuels	1,000.00
3/18	Toby Moffet for U.S. Senate	2,000.00
2/8	Committee to Re-Elect Kennedy	1,000.00
3/31	Citizens for Downey	250.00

<u>1982 CONTRIBUTIONS (CONTINUED)</u>

Date		Amount
4/2	Fund for Democratic Majority	$ 5,000.00
4/27	National PAC	5,000.00
5/10	Democrats for the '80's	1,000.00
5/12	People for John Heinz Committee	1,500.00
9/24	Yates for Congress Committee	250.00
9/28	Kennedy for Senator	1,000.00
	Sub-Total	$ 22,500.00
	1981 Contributions Attributed to 1982	5,000.00
	Sub-Total	$ 27,500.00
	Refund from National PAC	(2,500.00)
	1982 Total	$ 25,000.00

83040411930

THE NATIONAL PAC 312

November 30 19 82 1-2/210 35

PAY TO THE ORDER OF MARSHALL S. COGAN $ 2,500.00

TWO THOUSAND, FIVE HUNDRED & 00/100-------------- DOLLARS

CHASE

The Chase Manhattan Bank, N.A.
410 Park Ave., N.Y., N.Y. 10022

FOR return contribution - 1982

TREASURER

⑆021000021⑆ 035 1 171822⑈ 0312

8 3 0 4 0 4 1 1 9 5 1

U.S. SENATE DEMOCRATIC LEADERSHIP CIRCLE
444 N. CAPITOL ST., NW.
WASHINGTON, D.C. 20001

1229

3 Dec. 1982

15-120
540

PAY TO THE ORDER OF Marshall S. Cogan $ 5,000.00

Five Thousand and no cents DOLLARS

D.C. National Bank ★★★
DISTRICT OF COLUMBIA NATIONAL BANK
Main Office
1801 K Street, N. W.
Washington, D.C. 20006

FOR Acct 5401 - 1981 contribution refund

⑈00001229⑈ ⑆054001204⑆ ⑈268290 7⑈

9114040338

File

U.S. Senate Democratic Leadership Circle

file
FEC

Chairman
U.S. Sen. Alan Cranston
California

Co-Chairmen
U.S. Sen. Robert C. Byrd
West Virginia
U.S. Sen. Wendell H. Ford
Kentucky
U.S. Sen. Daniel K. Inouye
Hawaii
U.S. Sen. Henry M. Jackson
Washington
U.S. Sen. Edward M. Kennedy
Massachusetts
U.S. Sen. Russell B. Long
Louisiana

Executive Director
Theodore Waller

Finance Director
Barbara Taylor

Capitol Coordinator
Esther Coopersmith

8304041193

December 3, 1982

Mr. Marshall S. Cogan
Chairman
GFI/Knoll International
153 East 53rd Street
New York, New York 10022

Dear Mr. Cogan:

Herewith, as requested by your secretary earlier in the week, our check in the amount of $5,000, being a refund of your 1981 contribution to the U.S. Senate Democratic Leadership Circle. This refund is to bring you into compliance with the federal contribution limits.

Sincerely,

Theodore Waller

TW/dg
Enclosure

Toby Moffett
FOR UNITED STATES SENATE

December 10, 1982

Mr. Marshall Cogan
Knoll International
153 E 53rd Street
New York, New York 10022

Dear Mr. Cogan:

Earlier this week I returned a $1000.00 contribution to you after it was determined that you had contributed more than the legal limit allowed by the F.E.C. I have reviewed our records and now show contributions totalling $2000.00 from you, $1000.00 from your wife,Maureen, and $1000 from you son,Andrew. If your records show these same contributions, and you have an interest in contributing another $1000.00 to help pay off Toby's campaign debt, may I suggest another contribution from either your wife or your son.

I apologize for the error made by us in accepting your third contribution. We appreciate your generous support.

Sincerely,

Gaylord Bourne

Gaylord Bourne
Finance Director

83040411954

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TOBY MOFFETT
FOR U.S. SENATE
425A FRANKLIN AVENUE
HARTFORD, CT 06114

655

12-7 19 82

51-57
119

PAY TO THE ORDER OF Marshall Cogan $ 1000.00

ONE THOUSAND 00/00 DOLLARS

CBT THE CONNECTICUT BANK AND TRUST COMPANY
WEST HARTFORD, CONNECTICUT

FOR REFUND - 1982 POLITICAL CONTRIBUTION

Michael Schaffer

⑈000655⑈ ⑆011900571⑆ 128394 4⑈

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AKIN, GUMP, STRAUSS, HAUER & FELD
1333 NEW HAMPSHIRE AVENUE, N.W.
SUITE 400
WASHINGTON, D. C. 20036

TO:

Danny L. McDonald
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

FIRST CLASS MAIL

83 MAR 21 P4:4

Gcc# 9693

AKIN, GUMP, STRAUSS, HAUER & FELD

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AUSTIN, TEXAS 78701
(512) 476-7167

March 17, 1983

17 P4: 25

Mr. Michael Dymersky
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

RE: MUR 1526
Marshall S. Cogan

Dear Mr. Dymersky:

Per your telephone conversation with Carolyn Gipson this morning, I am formally requesting an extension of the date on which we are required to respond to MUR 1526.

I would appreciate an extension on filing a response until tomorrow, March 18, 1983.

Sincerely,

Edward S. Knight

Edward S. Knight

ESK:lsh

8304041195 7

N. GUMP, STRAUSS, HAUER & FELD
ATTORNEYS AT LAW
SUITE 400
1333 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, D.C. 20036

83040411

Michael Dymersky
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

83 MAR 17 P4: 01

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 23, 1983

Edward S. Knight, Esquire
Akin, Gump, Strauss, Hauer & Feld
1333 New Hamsphire Ave., N.W.
Suite 400
Washington, D.C. 20036

RE: MUR 1526
Marshall S. Cogan

Dear Mr. Knight:

On February 17, 1983, the Federal Election Commission determined that there is reason to believe that your client, Marshall S. Cogan, violated 2 U.S.C. §§ 441a(a)(3) and 441a(a)(1)(A) provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") by contributing $30,000 in the 1981 calendar year, $28,500 in the 1982 calendar year, and $3000 in the aggregate to the Toby Moffet for U.S. Senate Committee. The General Counsel's factual and legal analysis which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter.

In the absence of any additional information which demonstrates that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if you or your client so desire. See 11 C.F.R. § 111.18(d).

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

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For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Michael Dymersky at 202/523-4057.

Sincerely,

DANNY L. McDONALD
Chairman

Enclosures

General Counsel's Factual and Legal Analysis
Procedures

83040411950

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 1526
STAFF MEMBER & TEL. NO.
Michael Dymersky
(202) 523-4057

RESPONDENT Marshall S. Cogan

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

SUMMARY OF ALLEGATIONS

On behalf of his client, Marshall S. Cogan, Ed Knight met with staff members on December 3, 1982, to disclose facts which appear to constitute violations of 2 U.S.C. § 441a(a)(3) and § 441a(a)(1)(A) by Mr. Cogan.

FACTUAL AND LEGAL ANALYSIS

Figures derived from both the list proffered by Cogan's attorney and records on file at the Commission indicate that

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Cogan made $36,000 in aggregate contributions during the 1981[1] calendar year, and $22,500 in aggregate contributions during the 1982[2] calendar year.

2 U.S.C. § 441a(a)(3) imposes a ceiling of $25,000 in aggregate contributions in any calendar year. However, Commission Regulations at 11 C.F.R. § 110.5 provide that contributions "made in a year other than in the calendar year in which an election is held," can be attributed, for the purposes of Section 441a(a)(3), to the "calendar year in which the election is held." The regulations further provide that contributions to political committees other than specific candidate committees, e.g. to political committees established and maintained by a national political party, made in a calendar year must be attributed to that calendar year, notwithstanding the fact that no federal election occurred in that calendar year.

1/ Cogan made contributions to the following in calendar year 1981: U.S. Senate Democratic Leadership Circle ($15,000 on 3/20), D.N.C. Services Corporation ($5,000 on 4/8), Democratic Congressional Dinner ($10,000 on 6/18), Tom Lantos for Congress ($1,000 on 2/6 and $1,000 on 9/25), Sen. Lloyd Bentsen Committee ($1,000 on 3/18), Moynihan for Senate Committee ($500 on 9/18 and $500 on 10/13), People for Jackson ($1,000 on 11/5) and Toby Moffet for U.S. Senate ($1,000 on 12/4): total: $36,000.

2/ Cogan made contributions to the following in calendar year 1982: People for Jackson ($1,000 on 1/11), Democratic Congressional Dinner Committee ($2,500 on 2/3), Lautenberg for U.S. Senate ($1,000 on 3/11), Decisions '82 - H. Samuels ($1,000 on 3/11), Toby Moffet for U.S. Senate ($2,000 on 3/18), Committee to Re-elect Senator Kennedy ($1,000 on 2/8 and $1,000 on 9/28), Citizens for Downey ($250 on 3/31), Fund for a Democratic Majority ($5,000 on 4/2), National PAC ($5,000 on 4/27), Democrats for the '80's ($1,000 on 5/10), People for John Heinz Committee ($1,500 on 5/12) and Yates for Congress Committee ($250 on 9/24): total: $22,500.

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11 C.F.R. § 110.5(b)(2). Thus, it appears that all 1981 contributions (aggregating ($6,000)) other than those to the three national party committees are attributable to the 1982 limit. (See footnote 1, <u>supra</u>). Therefore, for purposes of limitations, Cogan made $30,000 in aggregate contributions in 1981, and $28,500 in aggregate contributions in 1982. Accordingly, Cogan appears to have violated the Section 441a(a)(3) contribution ceiling by $5,000 in 1981, and by $3,500 in 1982.

It appears that Cogan has sought and received refunds totaling $5,000[3] for 1981 and $3,500[4] for 1982, with a view toward correcting to the extent possible, contribution of the excessive amounts in violation of Section 441a(a)(3).

It is also evident that Cogan contributed $3,000 in the aggregate to the Toby Moffet for U.S. Senate Committee ("the Committee"). At Cogan's request, the Committee refunded $1,000 (see footnote 4). Cogan nonetheless appears to have violated 2 U.S.C. § 441a(a)(1)(A) by virtue of the contribution of an excessive amount ($1,000) to the Committee.

3/ The Democratic National Committee Services Corporation refunded $5,000 in December, 1982.

4/ The Toby Moffet for U.S. Senate Committee refunded $1,000 and National PAC refunded $2,500 in December.

RECOMMENDATIONS

1) Open a MUR.

2) Find reason to believe that Marshall S. Cogan violated 2 U.S. § 441a(a)(3) by contributing more than $25,000 in 1981 and 1982 calendar years; and,

3) Find reason to believe that Marshall S. Cogan violated 2 U.S.C. § 441a(a)(1)(A) by contributing $3,000 to the Toby Moffet for U.S. Senate Committee, but take no further action as to this violation.

8304011195

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Edward S. Knight, Esquire
Akin, Gump ~~et al.~~ Full name of firm stated on original per Ketter
1333 New Hamsphire Ave., N.W.
Suite 400
Washington, D.C. 20036

RE: MUR
Marshall S. Cogan

Dear Mr. Knight:

On February , 1983, the Federal Election Commission determined that there is reason to believe that your client, Marshall S. Cogan, violated 2 U.S.C. §§ 441a(a)(3) and 441a(a)(1)(A) provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") by contributing $30,000 in the 1981 calendar year, $28,500 in the 1982 calendar year, and $3000 in the aggregate to the Toby Moffet for U.S. Senate Committee. The General Counsel's factual and legal analysis which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter.

In the absence of any additional information which demonstrates that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if you or your client so desire. See 11 C.F.R. § 111.18(d).

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

8304041195

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Michael Dymersky at 202/523-4057.

Sincerely,

2/22/84

Enclosures

General Counsel's Factual and Legal Analysis
Procedures

83040411954

FEDERAL ELECTION COMMISSION

WASHINGTON, D.C 20463

February 23, 1983

Ercole Labadia, Treasurer
Toby Moffet for U.S. Senate Committee
P.O. Box 745
Bristol, Connecticut 06010

RE: MUR 1526

Dear Ms. Labadia:

On February 17 , 1983, the Commission found reason to believe that your committee had violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above referenced MUR. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file as it applies to your committee. The file will be made part of the public record within 30 days of its being closed with respect to all other respondents involved. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that by accepting $3,000 from Marshall S. Cogan ($1,000 made on 12/4/81 and $2,000 made on 3/18/82), the Committee appears to be in violation of 2 U.S.C. § 441a(f) (the refund of the excessive amount notwithstanding) and you should take immediate steps to insure that this activity does not occur in the future.

The General Counsel's Factual and Legal Analysis which formed a basis for the Commission's finding is attached for your information.

If you have any questions, please direct them to Michael Dymersky at (202) 523-4057.

Sincerely,

Danny L. McDonald

DANNY L. McDONALD
Chairman

Enclosure

General Counsel's Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 1526
STAFF MEMBER & TEL. NO.
Michael Dymersky
(202) 523-4057

RESPONDENT Toby Moffet for U.S. Senate

SOURCE OF MUR: INTERNALLY GENERATED

SUMMARY OF ALLEGATIONS

The Toby Moffet for U.S. Senate Committee accepted $3,000 in calendar years 1981 and 1982 from Marshall S. Cogan, in violation of 2 U.S.C. § 441a(f).

FACTUAL BASIS AND LEGAL ANALYSIS

It appears that the Toby Moffet for U.S. Senate Committee (the Committee) violated 2 U.S.C. § 441a(f) when it knowingly accepted contributions of $1,000 (made on 12/4/81) and $2,000 (made on 3/18/82) from Marshall S. Cogan.

At Cogan's request, the Committee refunded $1,000 in December, 1982. Nonetheless, it appears that the Committee violated 2 U.S.C. § 441a(f) by its knowing acceptance of the excessive amount.

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<u>RECOMMENDATION</u>

Find reason to believe that the Toby Moffet for U.S. Senate Committee violated 2 U.S.C. § 441a(f), by accepting $3,000 from Marshall S. Cogan, but take no further action and close the file as to it.

83040411959

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Ercole Labadia, Treasurer
Toby Moffet for U.S. Senate Committee
P.O. Box 745
Bristol, Connecticut 06010

RE: MUR

Dear Ms. Labadia:

On February , 1983, the Commission found reason to believe that your committee had violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above referenced MUR. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file as it applies to your committee. The file will be made part of the public record within 30 days of its being closed with respect to all other respondents involved. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that by accepting $3,000 from Marshall S. Cogan ($1,000 made on 12/4/81 and $2,000 made on 3/18/82), the Committee appears to be in violation of 2 U.S.C. § 441a(f) (the refund of the excessive amount notwithstanding) and you should take immediate steps to insure that this activity does not occur in the future.

The General Counsel's Factual and Legal Analysis which formed a basis for the Commission's finding is attached for your information.

If you have any questions, please direct them to Michael Dymersky at (202) 523-4057.

Sincerely,

Enclosure

General Counsel's Factual and Legal Analysis

8304041197

FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Ercole Labadia, Treasurer
Toby Moffet for U.S. Senate Committee
P.O. Box 745
Bristol, Connecticut 06010

RE: MUR

Dear Ms. Labadia:

On February , 1983, the Commission found reason to believe that your committee had violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above referenced MUR. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file as it applies to your committee. The file will be made part of the public record within 30 days of its being closed with respect to all other respondents involved. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that by accepting $3,000 from Marshall S. Cogan ($1,000 made on 12/4/81 and $2,000 made on 3/18/82), the Committee appears to be in violation of 2 U.S.C. § 441a(f) (the refund of the excessive amount notwithstanding) and you should take immediate steps to insure that this activity does not occur in the future.

The General Counsel's Factual and Legal Analysis which formed a basis for the Commission's finding is attached for your information.

If you have any questions, please direct them to Michael Dymersky at (202) 523-4057.

Sincerely,

Enclosure

General Counsel's Factual and Legal Analysis

83040411971

BEFORE THE FEDERAL ELECTION COMMISSION

MUR 1526

In the Matter of	)	
	)	Pre-MUR 100
Marshall S. Cogan	)	
Toby Moffet for U.S. Senate	)	

CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission Executive Session on February 17, 1983, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in Pre-MUR 100:

1. Open a MUR;
2. Find reason to believe that Marshall S. Cogan violated 2 U.S.C. §441a(a)(3) by contributing more than $25,000 in 1981 and 1982 calendar years;
3. Find reason to believe that Marshall S. Cogan violated 2 U.S.C. §441a(a)(1)(A) by contributing $3,000 to the Toby Moffet for U.S. Senate Committee, but take no furhter action as to this violation;
4. Find reason to believe that the Toby Moffet for U.S. Senate Committee violated 2 U.S.C. §441a(f) by accepting $3,000 from Marshall S. Cogan, but take no further action and close the file as to it; and,
5. Send the appropriate notification letters and General Counsel's Factual and Legal Analyses.

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

Attest:

Feb. 17, 1983

DATE

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

83040411972

SENSITIVE

RECEIVED OFFICE OF THE COMMISSION SECRETARY

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

83 FEB 10 AM 11: 27

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL BY OGC TO THE COMMISSION 2-10-83

PRE-MUR #100
STAFF MEMBER
Michael Dymersky

SOURCE OF MUR: INTERNALLY GENERATED

RESPONDENTS' NAMES: Marshall S. Cogan
Toby Moffet for U.S. Senate

RELEVANT PROVISIONS OF THE ACT AND REGULATIONS: 2 U.S.C. § 441a(a)(3); § 441a(f)
§ 441a(a)(1)(A)
11 C.F.R. § 110.5

GENERATION OF MATTER

Marshall S. Cogan, Sua Sponte

SUMMARY OF ALLEGATIONS

On behalf of his client, Marshall S. Cogan, Ed Knight met with staff members on December 3, 1982, to disclose facts which appear to constitute violations of 2 U.S.C. § 441a(a)(3) and § 441a(a)(1)(A) by Mr. Cogan. In addition, it appears that the Toby Moffet for U.S. Senate Committee violated 2 U.S.C. § 441a(f).

FACTUAL AND LEGAL ANALYSIS

Figures derived from both the list proffered by Cogan's attorney and records on file at the Commission indicate that

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Cogan made $36,000 in aggregate contributions during the 1981[1] calendar year, and $22,500 in aggregate contributions during the 1982[2] calendar year.

2 U.S.C. § 441a(a)(3) imposes a ceiling of $25,000 in aggregate contributions in any calendar year. However, Commission Regulations at 11 C.F.R. § 110.5 provide that contributions "made in a year other than in the calendar year in which an election is held," can be attributed, for the purposes of Section 441a(a)(3), to the "calendar year in which the election is held." The regulations further provide that contributions to political committees other than specific candidate committees, e.g. to political committees established and maintained by a national political party, made in a calendar year must be attributed to that calendar year, notwithstanding the fact that no federal election occurred in that calendar year.

1/ Cogan made contributions to the following in calendar year 1981: U.S. Senate Democratic Leadership Circle ($15,000 on 3/20), D.N.C. Services Corporation ($5,000 on 4/8), Democratic Congressional Dinner ($10,000 on 6/18), Tom Lantos for Congress ($1,000 on 2/6 and $1,000 on 9/25), Sen. Lloyd Bentsen Committee ($1,000 on 3/18), Moynihan for Senate Committee ($500 on 9/18 and $500 on 10/13), People for Jackson ($1,000 on 11/5) and Toby Moffet for U.S. Senate ($1,000 on 12/4): total: $36,000.

2/ Cogan made contributions to the following in calendar year 1982: People for Jackson ($1,000 on 1/11), Democratic Congressional Dinner Committee ($2,500 on 2/3), Lautenberg for U.S. Senate ($1,000 on 3/11), Decisions '82 - H. Samuels ($1,000 on 3/11), Toby Moffet for U.S. Senate ($2,000 on 3/18), Committee to Re-elect Senator Kennedy ($1,000 on 2/8 and $1,000 on 9/28), Citizens for Downey ($250 on 3/31), Fund for a Democratic Majority ($5,000 on 4/2), National PAC ($5,000 on 4/27), Democrats for the '80's ($1,000 on 5/10), People for John Heinz Committee ($1,500 on 5/12) and Yates for Congress Committee ($250 on 9/24): total: $22,500.

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11 C.F.R. § 110.5(b)(2). Thus, it appears that all 1981 contributions (aggregating ($6,000)) other than those to the three national party committees are attributable to the 1982 limit. (See footnote 1, supra). Therefore, for purposes of the limitations Cogan made $30,000 in aggregate contributions in 1981, and $28,500 in aggregate contributions in 1982. Accordingly, Cogan appears to have violated the Section 441a(a)(3) contribution ceiling by $5,000 in 1981, and by $3,500 in 1982.

It appears that Cogan has sought and received refunds totaling $5,000[3/] for 1981 and $3,500[4/] for 1982, with a view toward correcting to the extent possible, contribution of the excessive amounts in violation of Section 441a(a)(3).

It is also evident that Cogan contributed $3,000 in the aggregate to the Toby Moffet for U.S. Senate Committee ("the Committee"). (At Cogan's request, the Committee refunded $1,000 (see footnote 4)). Cogan nonetheless appears to have violated 2 U.S.C. § 441a(a)(1)(A) by virtue of the contribution of an excessive amount ($1,000) to the Committee. It appears that the Committee violated 2 U.S.C. § 441a(f) by its knowing acceptance of the excessive amount ($1,000). While it is evident that the

---

3/ The Democratic National Committee Services Corporation refunded $5,000 in December, 1982.

4/ The Toby Moffet for U.S. Senate Committee refunded $1,000 and National PAC refunded $2,500 in December.

Committee violated the provision, it is important that the violation has been corrected to the extent possible by the refund of the improper amount. Moreover, the refund was made prior to any Commission notification.

The General Counsel believes it to be significant that Cogan volunteered the fact of the excessive contributions and that he seeks to cooperate with the Commission in this matter. Moreover, it is important that Cogan did not intentionally exceed the Section 441a(a)(3) limitation, and has sought and received refunds of the excessive amounts. While these factors are compelling, the fact still remains that the amount in violation was substantial, the violations occurred and continued over a two year period, and another provision of the Act appears to have been violated, _viz_. Section 441a(a)(1)(A). As to the apparent violation of Section 441a(a)(1)(A), it has been corrected to the extent possible, _i.e._ the excessive amount has been refunded.

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RECOMMENDATIONS

1) Open a MUR;

2) Find reason to believe that Marshall S. Cogan violated 2 U.S. § 441a(a)(3) by contributing more than $25,000 in 1981 and 1982 calendar years;

3) Find reason to believe that Marshall S. Cogan violated 2 U.S.C. § 441a(a)(1)(A) by contributing $3,000 to the Toby Moffet for U.S. Senate Committee, but take no further action as to this violation;

4) Find reason to believe that the Toby Moffet for U.S. Senate Committee violated 2 U.S.C. § 441a(f), by accepting $3,000

from Marshall S. Cogan, but take no further action and close the file as to it; and,

7) Send the appropriate notification letters and General Counsel's Factual and Legal Analyses.

February 9, 1983
Date

Charles N. Steele
General Counsel

BY:
Kenneth A. Gross
Associate General Counsel

Attachments
1) December 2, 1982 letter from Marshall S. Cogan's attorney, with attachments (2 pages)
2) December 13, 1982 letter from Marshall S. Cogan's attorney, with attachments (6 pages)
3) Proposed notification letters and General Counsel's Factual and Legal Analyses

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(1)

AKIN, GUMP, STRAUSS, HAUER & FELD
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1333 NEW HAMPSHIRE AVENUE, N.W.
SUITE 400
WASHINGTON, D.C. 20036
(202) 887-4000
TELEX 89-668
WRITER'S DIRECT DIAL NUMBER 887- 4235

DALLAS OFFICE
2800 REPUBLICBANK DALLAS BUILDING
DALLAS, TEXAS 75201
(214) 655-2800

AUSTIN OFFICE
900 AMERICAN BANK TOWER
AUSTIN, TEXAS 78701
(512) 476-7167

December 2, 1982

P2:56

Kenneth A. Gross, Esquire
Assoc. General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C.

Re: Mr. Marshall S. Cogan

Dear Mr. Gross:

On behalf of our client, Mr. Marshall S. Cogan, we are notifying your office *sua sponte* of a possible unintentional violation of Federal Election Commission regulation 11 C.F.R. §110.5, concerning the annual contribution limit. It appears that Mr. Cogan may have inadvertently exceeded the annual contribution limits for 1981 and 1982. We have enclosed a list that, according to his records, reflects federal election contributions for those years.

In addition to notifying the Commission *sua sponte*, Mr. Cogan is taking other mitigating actions. He is endeavoring to have certain contributions refunded to him, and to date has received a $2,500 refund from a 1982 contribution to the National PAC. Other refunds are being sought.

Mr. Cogan intends to cooperate in every possible way with your office on this matter.

Sincerely,

Edward S. Knight

Edward S. Knight

Enclosure

8304011976

Attachment I -(1)

2

1981 Contributions

Date		Amount
2/6	Tom Lantos for Congress	$ 1,000.00
3/18	Sen. Lloyd Bentsen Committee	1,000.00
3/20	U.S. Senate Democratic Leadership Circle	15,000.00
4/8	D.N.C. Services Corporation	5,000.00
6/18	Democratic Congressional Dinner	10,000.00
9/25	Tom Lantos for Congress	1,000.00
11/5	People for Jackson	1,000.00
12/4	Toby Moffet Committee	1,000.00

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1982 Contributions

1/11	People for Jackson	1,000.00
2/3	1982 Democratic Congressional	2,500.00
3/11	Lautenberg for U.S. Senate	1,000.00
3/11	Decisions '82 - H. Samuels	1,000.00
3/18	Toby Moffet U.S. Senate	2,000.00
3/8	Committee to Re-Elect Kennedy	1,000.00
3/31	Citizens for Downey	250.00
4/2	Fund for Democratic Majority	5,000.00
4/27	National PAC	5,000.00
5/10	Democrats for the '80's	1,000.00
5/12	People for John Heinz Committee	1,500.00
9/24	Yates for Congress Committee	250.00
9/28	Kennedy for Senator	1,000.00

Attachment I - (2)

3

AKIN, GUMP, STRAUSS, HAUER & FELD

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1333 NEW HAMPSHIRE AVENUE, N.W.

SUITE 400

WASHINGTON, D.C. 20036

(202) 887-4000

TELEX 89-665

WRITER'S DIRECT DIAL NUMBER 887-

DALLAS OFFICE
2800 REPUBLICBANK DALLAS BUILDING
DALLAS, TEXAS 75201
(214) 655-2800

AUSTIN OFFICE
900 AMERICAN BANK TOWER
AUSTIN, TEXAS 78701
(512) 476-7167

December 13, 1982

Kenneth A. Gross, Esquire
Associate General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

RE: Mr. Marshall S. Cogan
(Pre-MUR100)

Dear Mr. Gross:

This letter explains further the facts and circumstances surrounding Mr. Marshall S. Cogan's discovery of his possible violation of Federal Election Commission regulations (11 C.F.R. § 110.5). As you know, this discovery was initially described in my December 2, 1982 correspondence to you on behalf of Mr. Cogan.

In early November of this year, Mr. Cogan became concerned over the amount of his contributions to federal elections. 1/ Although he was not intimately familiar with federal election law at that time, he was interested in obtaining a better accounting of his contributions to candidates for federal office in 1981 and 1982. With this in mind, Mr. Michael Schwartzbard, Mr. Cogan's accountant, prepared a memorandum detailing the individuals to whom Mr. Cogan contributed and the amounts he had contributed in 1982.

This memorandum was sent to Mr. Cogan on the morning of November 12. According to Mr. Cogan, this memorandum was to be an item of discussion with his attorney, Mr. Alan Feld, at a meeting scheduled for November 18, 1982.

1/ In fact, Mr. Cogan explored the possibility of having his company form a Political Action Committee ("PAC") and requested information regarding PACs from this firm. On September 2, 1982, this information was sent to him. (See Enclosure A.)

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Attachment II - (1)

On the morning of November 18, Ms. Helen Lento, Mr. Cogan's secretary, received a telephone call from a Mr. Greenspan, who stated that he was an associate of the newspaper journalist Jack Anderson. He told Ms. Lento that he was preparing background material for a possible story on the Federal Election Commission. According to Mr. Greenspan, Mr. Cogan's name had been identified as a major contributor to federal political candidates. In particular, Mr. Greenspan indicated that Mr. Cogan's two $1,000 contributions to the "Tom Lantos for Congress Committee" could constitute a possible violation of Federal election law. Mr. Greenspan asked Ms. Lento if Mr. Cogan wanted to comment upon the Lantos contributions. 2/

After Mr. Cogan was informed of the telephone call by Ms. Lento, and being unaware of the federal regulations in this area, Mr. Cogan immediately contacted Mr. Schwartzbard to ask him to determine whether there had in fact been a violation of the federal election law. At the time of this call, Mr. Feld was visiting the offices of Mr. Schwartzbard. Following the call, Mr. Feld, Mr. Schwartzbard and I began a vigorous investigation of Mr. Cogan's political contributions to federal candidates in 1981 and 1982. According to our preliminary findings, it appeared that Mr. Cogan had exceeded the annual federal contribution limitation by $5,000 in 1981 and $2,500 in 1982. Immediately thereafter, Mr. Cogan began efforts to recover the money which exceeded the annual limitations. On December 2, 1982, I submitted on behalf of Mr. Cogan a preliminary listing of the federal election contributions made by him during those years. When the December 2 list was submitted, Mr. Cogan had received a $2,500 refund from a 1982 contribution to the National PAC. A $5,000 refund of a "Democratic National Committee" contribution was received shortly thereafter.

We also advised Mr. Cogan that he may have exceeded the maximum allowable contribution to a candidate when he contributed a total of $3,000 to the "Toby Moffett for U.S. Senate Committee" in 1981 and 1982. Consequently, Mr. Cogan sought and received a $1,000 refund from the Toby Moffett Committee.

2/ These contributions did not constitute a violation because Mr. Lantos was a candidate in both a primary and general election (11 C.F.R. §110.1(a)).

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(5)

Finally, after a complete audit of Mr. Cogan's 1981 expenditures, we discovered that we had failed to notify the Commission that Mr. Cogan had made a $500 contribution to the "Moynihan for Senate Committee" on September 18, 1981 and another $500 contribution to the same Committee on October 13, 1981. However, with the refund from the Moffett Committee, this additional $1,000 in contributions to a federal candidate should not cause Mr. Cogan to exceed the annual maximum of $25,000 in 1982. Enclosed for your information is a revised schedule of Mr. Cogan's federal political contributions in 1981 and 1982. (See Enclosure B.)

Mr. Cogan has made every effort to provide the Commission with full and complete information with regard to his federal political contributions. We stand ready to cooperate with the Commission in every possible way with regard to this matter.

Sincerely,

AKIN, GUMP, STRAUSS, HAUER & FELD

By: Edward S. Knight
Edward S. Knight

ESK:lsh
Enclosures

cc: Mr. Michael Dymersky

83040411193

Attachment II - (3)

AKIN, GUMP, STRAUSS, HAUER & FELD
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1333 NEW HAMPSHIRE AVENUE, N.W.
SUITE 400
WASHINGTON, D.C. 20036
(202) 887-4000
TELEX 89-665
WRITER'S DIRECT DIAL NUMBER 887- 4196

(6)

DALLAS OFFICE
2800 REPUBLICBANK DALLAS BUILDING
DALLAS, TEXAS 75201
(214) 655-2800

AUSTIN OFFICE
900 AMERICAN BANK TOWER
AUSTIN, TEXAS 78701
(512) 476-7167

September 2, 1982

Messrs. Marshall S. Cogan and
Stephen C. Swid
Knoll International, Inc.
153 E. 53rd Street
Suite 5901
New York, New York 10022

Re: Political Action Committee

Dear Marshall and Stephen:

Earlier this week, Murray Rothenberg inquired as to the logistics of Knoll's establishing a Political Action Committee ("PAC"). At Alan Feld's suggestion, we are enclosing materials pertinent to your forming a PAC. Alan thought you might want to review the material prior to his calling you.

If we can answer any questions or provide you with additional information, please let us know.

Sincerely,

AKIN, GUMP, STRAUSS, HAUER & FELD

By: Michael S. Mandel
Edward S. Knight
Michael S. Mandel

cc: Alan D. Feld, P.C.
Murray Rothenberg

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Attachment II-(4)

(7)

ATTACHMENT B
12/13/82

1981 CONTRIBUTIONS

Date		Amount
Contributions Given in and Attributed to 1981		
3/20	U.S. Senate Democratic Leadership Circle	$ 15,000.00
4/8	D.N.C. Services Corporation	5,000.00
6/18	Democratic Congressional Dinner	10,000.00
	Sub-Total	$ 30,000.00
	Refund from Democratic National Committee	(5,000.00)
	1981 Total	$ 25,000.00

Contributions Given in 1981 but Attributed to 1982

2/5	Tom Lantos for Congress	$ 1,000.00
3/18	Sen. Lloyd Bentsen Committee	1,000.00
9/18	Moynihan for Senate Committee	500.00
9/21	Tom Lantos for Congress	1,000.00
10/13	Moynihan for Senate Committee	500.00
11/5	People for Jackson	1,000.00
12/4	Toby Moffet Committee	1,000.00
	Sub-Total	$ 6,000.00
	Refund from Toby Moffet Committee	(1,000.00)
	Total	$ 5,000.00

1982 CONTRIBUTIONS

1/11	People for Jackson	$ 1,000.00
2/3	1982 Democratic Congressional	2,500.00
3/11	Lautenberg for U.S. Senate	1,000.00
3/11	Decisions '82 - H. Samuels	1,000.00
3/18	Toby Moffet for U.S. Senate	2,000.00
2/8	Committee to Re-Elect Kennedy	1,000.00
3/31	Citizens for Downey	250.00

83040411934

Attachment II - (5)

(8)

1982 CONTRIBUTIONS (CONTINUED)

Date		Amount
4/2	Fund for Democratic Majority	$ 5,000.00
4/27	National PAC	5,000.00
5/10	Democrats for the '80's	1,000.00
5/12	People for John Heinz Committee	1,500.00
9/24	Yates for Congress Committee	250.00
9/28	Kennedy for Senator	1,000.00
	Sub-Total	$ 22,500.00
	1981 Contributions Attributed to 1982	5,000.00
	Sub-Total	$ 27,500.00
	Refund from National PAC	(2,500.00)
	1982 Total	$ 25,000.00

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Attachment II - (6)

9

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Edward S. Knight, Esquire
Akin, Gump et al.
1333 New Hamsphire Ave., N.W.
Suite 400
Washington, D.C. 20036

RE: MUR
Marshall S. Cogan

Dear Mr. Knight:

On February , 1983, the Federal Election Commission determined that there is reason to believe that your client, Marshall S. Cogan, violated 2 U.S.C. §§ 441a(a)(3) and 441a(a)(1)(A) provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") by contributing $30,000 in the 1981 calendar year, $28,500 in the 1982 calendar year, and $3000 in the aggregate to the Toby Moffet for U.S. Senate Committee. The General Counsel's factual and legal analysis which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter.

In the absence of any additional information which demonstrates that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if you or your client so desire. See 11 C.F.R. § 111.18(d).

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

Attachment III - (1)

83040411986

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For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Michael Dymersky at 202/523-4057.

Sincerely,

Enclosures

General Counsel's Factual and Legal Analysis
Procedures

83040411937

Attachment IV-(2)

(11)

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. ______
STAFF MEMBER & TEL. NO.
Michael Dymersky
(202) 523-4057

RESPONDENT Marshall S. Cogan

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

8 3 0 4 0 4 1 1 9 3 5

SUMMARY OF ALLEGATIONS

On behalf of his client, Marshall S. Cogan, Ed Knight met with staff members on December 3, 1982, to disclose facts which appear to constitute violations of 2 U.S.C. § 441a(a)(3) and § 441a(a)(1)(A) by Mr. Cogan.

FACTUAL AND LEGAL ANALYSIS

Figures derived from both the list proffered by Cogan's attorney and records on file at the Commission indicate that

Attachment III-(3)

(12)

Cogan made $36,000 in aggregate contributions during the 1981[1] calendar year, and $22,500 in aggregate contributions during the 1982[2] calendar year.

2 U.S.C. § 441a(a)(3) imposes a ceiling of $25,000 in aggregate contributions in any calendar year. However, Commission Regulations at 11 C.F.R. § 110.5 provide that contributions "made in a year other than in the calendar year in which an election is held," can be attributed, for the purposes of Section 441a(a)(3), to the "calendar year in which the election is held." The regulations further provide that contributions to political committees other than specific candidate committees, e.g. to political committees established and maintained by a national political party, made in a calendar year must be attributed to that calendar year, notwithstanding the fact that no federal election occurred in that calendar year.

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1/ Cogan made contributions to the following in calendar year 1981: U.S. Senate Democratic Leadership Circle ($15,000 on 3/20), D.N.C. Services Corporation ($5,000 on 4/8), Democratic Congressional Dinner ($10,000 on 6/18), Tom Lantos for Congress ($1,000 on 2/6 and $1,000 on 9/25), Sen. Lloyd Bentsen Committee ($1,000 on 3/18), Moynihan for Senate Committee ($500 on 9/18 and $500 on 10/13), People for Jackson ($1,000 on 11/5) and Toby Moffet for U.S. Senate ($1,000 on 12/4): total: $36,000.

2/ Cogan made contributions to the following in calendar year 1982: People for Jackson ($1,000 on 1/11), Democratic Congressional Dinner Committee ($2,500 on 2/3), Lautenberg for U.S. Senate ($1,000 on 3/11), Decisions '82 - H. Samuels ($1,000 on 3/11), Toby Moffet for U.S. Senate ($2,000 on 3/18), Committee to Re-elect Senator Kennedy ($1,000 on 2/8 and $1,000 on 9/28), Citizens for Downey ($250 on 3/31), Fund for a Democratic Majority ($5,000 on 4/2), National PAC ($5,000 on 4/27), Democrats for the '80's ($1,000 on 5/10), People for John Heinz Committee ($1,500 on 5/12) and Yates for Congress Committee ($250 on 9/24): total: $22,500.

Attachment III -(4)

13

11 C.F.R. § 110.5(b)(2). Thus, it appears that all 1981 contributions (aggregating ($6,000)) other than those to the three national party committees are attributable to the 1982 limit. (See footnote 1, supra). Therefore, for purposes of limitations, Cogan made $30,000 in aggregate contributions in 1981, and $28,500 in aggregate contributions in 1982. Accordingly, Cogan appears to have violated the Section 441a(a)(3) contribution ceiling by $5,000 in 1981, and by $3,500 in 1982.

It appears that Cogan has sought and received refunds totaling $5,000[3/] for 1981 and $3,500[4/] for 1982, with a view toward correcting to the extent possible, contribution of the excessive amounts in violation of Section 441a(a)(3).

It is also evident that Cogan contributed $3,000 in the aggregate to the Toby Moffet for U.S. Senate Committee ("the Committee"). At Cogan's request, the Committee refunded $1,000 (see footnote 4). Cogan nonetheless appears to have violated 2 U.S.C. § 441a(a)(1)(A) by virtue of the contribution of an excessive amount ($1,000) to the Committee.

3/ The Democratic National Committee Services Corporation refunded $5,000 in December, 1982.

4/ The Toby Moffet for U.S. Senate Committee refunded $1,000 and National PAC refunded $2,500 in December.

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Attachment III-(5)

(14)

RECOMMENDATIONS

1) Open a MUR.

2) Find reason to believe that Marshall S. Cogan violated 2 U.S. § 441a(a)(3) by contributing more than $25,000 in 1981 and 1982 calendar years; and,

3) Find reason to believe that Marshall S. Cogan violated 2 U.S.C. § 441a(a)(1)(A) by contributing $3,000 to the Toby Moffet for U.S. Senate Committee, but take no further action as to this violation.

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Attachment III (6)

(15)

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Ercole Labadia, Treasurer
Toby Moffet for U.S. Senate Committee
P.O. Box 745
Bristol, Connecticut 06010

RE: MUR

Dear Ms. Labadia:

On February , 1983, the Commission found reason to believe that your committee had violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with the above referenced MUR. However, after considering the circumstances of this matter, the Commission has determined to take no further action and close its file as it applies to your committee. The file will be made part of the public record within 30 days of its being closed with respect to all other respondents involved. Should you wish to submit any materials to appear on the public record, please do so within 10 days.

The Commission reminds you that by accepting $3,000 from Marshall S. Cogan ($1,000 made on 12/4/81 and $2,000 made on 3/18/82), the Committee appears to be in violation of 2 U.S.C. § 441a(f) (the refund of the excessive amount notwithstanding) and you should take immediate steps to insure that this activity does not occur in the future.

The General Counsel's Factual and Legal Analysis which formed a basis for the Commission's finding is attached for your information.

If you have any questions, please direct them to Michael Dymersky at (202) 523-4057.

Sincerely,

Enclosure

General Counsel's Factual and Legal Analysis

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Attachment III-(7)

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. ________
STAFF MEMBER & TEL. NO.
Michael Dymersky
(202) 523-4057

RESPONDENT Toby Moffet for U.S. Senate

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

SUMMARY OF ALLEGATIONS

The Toby Moffet for U.S. Senate Committee accepted $3,000 in calendar years 1981 and 1982 from Marshall S. Cogan, in violation of 2 U.S.C. § 441a(f).

FACTUAL BASIS AND LEGAL ANALYSIS

It appears that the Toby Moffet for U.S. Senate Committee (the Committee) violated 2 U.S.C. § 441a(f) when it knowingly accepted contributions of $1,000 (made on 12/4/81) and $2,000 (made on 3/18/82) from Marshall S. Cogan.

At Cogan's request, the Committee refunded $1,000 in December, 1982. Nonetheless, it appears that the Committee violated 2 U.S.C. § 441a(f) by its knowing acceptance of the excessive amount.

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Attachment III-(8)

(17)

RECOMMENDATION

Find reason to believe that the Toby Moffet for U.S. Senate Committee violated 2 U.S.C. § 441a(f), by accepting $3,000 from Marshall S. Cogan, but take no further action and close the file as to it.

8304041199

Attachment IV -(9)

6cc# 9106

GENERAL FELT INDUSTRIES

CITICORP CENTER 153 EAST [illegible] STREET NEW YORK, NEW YORK 10022 (212) 752-6660

MARSHALL S. COGAN CO-CHAIRMAN

December 10, 1982

Mr. Kenneth A. Gross, Esquire
Assoc. General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: Respresentation by Counsel

Dear Mr.Gross:

In accordance with Federal Election Commission regulation 11 C.F.R. 111.23, this letter notifies the Commission that Edward S. Knight, and other attorneys of the law firm Akin, Gump, Strauss, Hauer and Feld at Mr. Knight's direction, shall represent me in any matters pending before the Commission. I authorize Mr. Knight to receive on my behalf any and all notifications and other communications from the Commission. This notification shall remain in effect until I inform the Commission otherwise in writing.

The address and telephone number of Mr. Knight are listed below:

Edward S. Knight, Esquire
Akin, Gump, Strauss, Hauer & Feld
1333 New Hampshire Avenue, N. W.
Suite 400
Washington, D. C. 20036
202-887-4135

Sincerely,

Marshall S. Cogan

8304011995

BY HAND

Mr. Kenneth A. Gross, Esquire
Assoc, General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Gcc# 9104

AKIN, GUMP, STRAUSS, HAUER & FELD

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1333 NEW HAMPSHIRE AVENUE, N.W.
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WASHINGTON, D.C. 20036
(202) 887-4000
TELEX 89-665
WRITER'S DIRECT DIAL NUMBER 887-

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2800 REPUBLICBANK DALLAS BUILDING
DALLAS, TEXAS 75201
(214) 655-2800

AUSTIN OFFICE
900 AMERICAN BANK TOWER
AUSTIN, TEXAS 78701
(512) 476-7167

December 13, 1982

22

Kenneth A. Gross, Esquire
Associate General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

RE: Mr. Marshall S. Cogan
(Pre-MUR100)

Dear Mr. Gross:

This letter explains further the facts and circumstances surrounding Mr. Marshall S. Cogan's discovery of his possible violation of Federal Election Commission regulations (11 C.F.R. § 110.5). As you know, this discovery was initially described in my December 2, 1982 correspondence to you on behalf of Mr. Cogan.

In early November of this year, Mr. Cogan became concerned over the amount of his contributions to federal elections. 1/ Although he was not intimately familiar with federal election law at that time, he was interested in obtaining a better accounting of his contributions to candidates for federal office in 1981 and 1982. With this in mind, Mr. Michael Schwartzbard, Mr. Cogan's accountant, prepared a memorandum detailing the individuals to whom Mr. Cogan contributed and the amounts he had contributed in 1982.

This memorandum was sent to Mr. Cogan on the morning of November 12. According to Mr. Cogan, this memorandum was to be an item of discussion with his attorney, Mr. Alan Feld, at a meeting scheduled for November 18, 1982.

1/ In fact, Mr. Cogan explored the possibility of having his company form a Political Action Committee ("PAC") and requested information regarding PACs from this firm. On September 2, 1982, this information was sent to him. (See Enclosure A.)

8304041197

On the morning of November 18, Ms. Helen Lento, Mr. Cogan's secretary, received a telephone call from a Mr. Greenspan, who stated that he was an associate of the newspaper journalist Jack Anderson. He told Ms. Lento that he was preparing background material for a possible story on the Federal Election Commission. According to Mr. Greenspan, Mr. Cogan's name had been identified as a major contributor to federal political candidates. In particular, Mr. Greenspan indicated that Mr. Cogan's two $1,000 contributions to the "Tom Lantos for Congress Committee" could constitute a possible violation of Federal election law. Mr. Greenspan asked Ms. Lento if Mr. Cogan wanted to comment upon the Lantos contributions. 2/

After Mr. Cogan was informed of the telephone call by Ms. Lento, and being unaware of the federal regulations in this area, Mr. Cogan immediately contacted Mr. Schwartzbard to ask him to determine whether there had in fact been a violation of the federal election law. At the time of this call, Mr. Feld was visiting the offices of Mr. Schwartzbard. Following the call, Mr. Feld, Mr. Schwartzbard and I began a vigorous investigation of Mr. Cogan's political contributions to federal candidates in 1981 and 1982. According to our preliminary findings, it appeared that Mr. Cogan had exceeded the annual federal contribution limitation by $5,000 in 1981 and $2,500 in 1982. Immediately thereafter, Mr. Cogan began efforts to recover the money which exceeded the annual limitations. On December 2, 1982, I submitted on behalf of Mr. Cogan a preliminary listing of the federal election contributions made by him during those years. When the December 2 list was submitted, Mr. Cogan had received a $2,500 refund from a 1982 contribution to the National PAC. A $5,000 refund of a "Democratic National Committee" contribution was received shortly thereafter.

We also advised Mr. Cogan that he may have exceeded the maximum allowable contribution to a candidate when he contributed a total of $3,000 to the "Toby Moffett for U.S. Senate Committee" in 1981 and 1982. Consequently, Mr. Cogan sought and received a $1,000 refund from the Toby Moffett Committee.

2/ These contributions did not constitute a violation because Mr. Lantos was a candidate in both a primary and general election (11 C.F.R. §110.1(a)).

83040411975

AKIN, GUMP, STRAUSS, HAUER & FELD

Finally, after a complete audit of Mr. Cogan's 1981 expenditures, we discovered that we had failed to notify the Commission that Mr. Cogan had made a $500 contribution to the "Moynihan for Senate Committee" on September 18, 1981 and another $500 contribution to the same Committee on October 13, 1981. However, with the refund from the Moffett Committee, this additional $1,000 in contributions to a federal candidate should not cause Mr. Cogan to exceed the annual maximum of $25,000 in 1982. Enclosed for your information is a revised schedule of Mr. Cogan's federal political contributions in 1981 and 1982. (See Enclosure B.)

Mr. Cogan has made every effort to provide the Commission with full and complete information with regard to his federal political contributions. We stand ready to cooperate with the Commission in every possible way with regard to this matter.

Sincerely,

AKIN, GUMP, STRAUSS, HAUER & FELD

By: Edward S. Knight
Edward S. Knight

ESK:lsh
Enclosures

cc: Mr. Michael Dymersky

ATTACHMENT A

AKIN, GUMP, STRAUSS, HAUER & FELD
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1333 NEW HAMPSHIRE AVENUE, N.W.
SUITE 400
WASHINGTON, D.C. 20036
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WRITER'S DIRECT DIAL NUMBER 887- 4196

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DALLAS, TEXAS 75201
(214) 655-2800

AUSTIN OFFICE
900 AMERICAN BANK TOWER
AUSTIN, TEXAS 78701
(512) 476-7167

September 2, 1982

Messrs. Marshall S. Cogan and
Stephen C. Swid
Knoll International, Inc.
153 E. 53rd Street
Suite 5901
New York, New York 10022

Re: Political Action Committee

Dear Marshall and Stephen:

Earlier this week, Murray Rothenberg inquired as to the logistics of Knoll's establishing a Political Action Committee ("PAC"). At Alan Feld's suggestion, we are enclosing materials pertinent to your forming a PAC. Alan thought you might want to review the material prior to his calling you.

If we can answer any questions or provide you with additional information, please let us know.

Sincerely,

AKIN, GUMP, STRAUSS, HAUER & FELD

By: Michael S. Mandel
Edward S. Knight
Michael S. Mandel

cc: Alan D. Feld, P.C.
Murray Rothenberg

83040412000

ATTACHMENT B
12/13/82

1981 CONTRIBUTIONS

Date		Amount
Contributions Given in and Attributed to 1981		
3/20	U.S. Senate Democratic Leadership Circle	$ 15,000.00
4/8	D.N.C. Services Corporation	5,000.00
6/18	Democratic Congressional Dinner	10,000.00
	Sub-Total	$ 30,000.00
	Refund from Democratic National Committee	(5,000.00)
	1981 Total	$ 25,000.00
Contributions Given in 1981 but Attributed to 1982		
2/6	Tom Lantos for Congress	$ 1,000.00
3/18	Sen. Lloyd Bentsen Committee	1,000.00
9/18	Moynihan for Senate Committee	500.00
9/25	Tom Lantos for Congress	1,000.00
10/13	Moynihan for Senate Committee	500.00
11/5	People for Jackson	1,000.00
12/4	Toby Moffet Committee	1,000.00
	Sub-Total	$ 6,000.00
	Refund from Toby Moffet Committee	(1,000.00)
	Total	$ 5,000.00

1982 CONTRIBUTIONS

1/11	People for Jackson	$ 1,000.00
2/3	1982 Democratic Congressional	2,500.00
3/11	Lautenberg for U.S. Senate	1,000.00
3/11	Decisions '82 - H. Samuels	1,000.00
3/18	Toby Moffet for U.S. Senate	2,000.00
2/8	Committee to Re-Elect Kennedy	1,000.00
3/31	Citizens for Downey	250.00

83040412001

1982 CONTRIBUTIONS (CONTINUED)

Date		Amount
4/2	Fund for Democratic Majority	$ 5,000.00
4/27	National PAC	5,000.00
5/10	Democrats for the '80's	1,000.00
5/12	People for John Heinz Committee	1,500.00
9/24	Yates for Congress Committee	250.00
9/28	Kennedy for Senator	1,000.00
	Sub-Total	$ 22,500.00
	1981 Contributions Attributed to 1982	5,000.00
	Sub-Total	$ 27,500.00
	Refund from National PAC	(2,500.00)
	1982 Total	$ 25,000.00

83040412002

83040412003

AKIN, GUMP, STRAUSS, HAUER & FELD
1333 NEW HAMPSHIRE AVENUE, N.W.
SUITE 400
WASHINGTON, D.C. 20036

TO: BY HAND

Kenneth A. Gross, Esquire
Associate General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

FIRST CLASS MAIL

Ecc# 9103

AKIN, GUMP, STRAUSS, HAUER & FELD
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A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
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December 13, 1982

Kenneth A. Gross, Esquire
Associate General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

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(Pre-MUR100)

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1/ In fact, Mr. Cogan explored the possibility of having his company form a Political Action Committee ("PAC") and requested information regarding PACs from this firm. On September 2, 1982, this information was sent to him. (See Enclosure A.)

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2/ These contributions did not constitute a violation because Mr. Lantos was a candidate in both a primary and general election (11 C.F.R. §110.1(a)).

AKIN, GUMP, STRAUSS, HAUER & FELD

Kenneth A. Gross, Esquire
December 13, 1982

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Sincerely,

AKIN, GUMP, STRAUSS, HAUER & FELD

By: Edward S. Knight
Edward S. Knight

8304041200

ESK:lsh
Enclosures

cc: Mr. Michael Dymersky

ATTACHMENT A

AKIN, GUMP, STRAUSS, HAUER & FELD
ATTORNEYS AT LAW
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September 2, 1982

Messrs. Marshall S. Cogan and
Stephen C. Swid
Knoll International, Inc.
153 E. 53rd Street
Suite 5901
New York, New York 10022

Re: Political Action Committee

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If we can answer any questions or provide you with additional information, please let us know.

Sincerely,

AKIN, GUMP, STRAUSS, HAUER & FELD

By: Michael S. Mandel
Edward S. Knight
Michael S. Mandel

cc: Alan D. Feld, P.C.
Murray Rothenberg

8304041200 7

ATTACHMENT B
12/13/82

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2/3	1982 Democratic Congressional	2,500.00
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3/11	Decisions '82 - H. Samuels	1,000.00
3/18	Toby Moffet for U.S. Senate	2,000.00
2/8	Committee to Re-Elect Kennedy	1,000.00
3/31	Citizens for Downey	250.00

83040412005

1982 CONTRIBUTIONS (CONTINUED)

Date		Amount
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4/27	National PAC	5,000.00
5/10	Democrats for the '80's	1,000.00
5/12	People for John Heinz Committee	1,500.00
9/24	Yates for Congress Committee	250.00
9/28	Kennedy for Senator	1,000.00
	Sub-Total	$ 22,500.00
	1981 Contributions Attributed to 1982	5,000.00
	Sub-Total	$ 27,500.00
	Refund from National PAC	(2,500.00)
	1982 Total	$ 25,000.00

83040412009

8304041 2010

AKIN, GUMP, STRAUSS, HAUER & FELD
1333 NEW HAMPSHIRE AVENUE, N.W.
SUITE 400
WASHINGTON, D. C. 20036

TO:

BY HAND

Mr. Michael Dymersky
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

FIRST CLASS MAIL

Gcc# 8998

AKIN, GUMP, STRAUSS, HAUER & FELD
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1333 NEW HAMPSHIRE AVENUE, N.W.
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(214) 655-2800

AUSTIN OFFICE
900 AMERICAN BANK TOWER
AUSTIN, TEXAS 78701
(512) 476-7167

November 23, 1982

2 NOV 23 P4: 08

Kenneth A. Gross, Esquire
Associate General Counsel (Enforcement)
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W., 7th Floor
Washington, D.C. 20463

Dear

This is to confirm the scheduling of a meeting to discuss the Marshall Cogan matter on Thursday, December 2nd, at 2:30 p.m.

Sincerely,

Edward Knight

Edward S. Knight

ESK:lsh

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Kenneth A. Gross, Esquire
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Federal Election Commission
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December 2, 1982

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Kenneth A. Gross, Esquire
Assoc. General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C.

Re: Mr. Marshall S. Cogan

Dear Mr. Gross:

On behalf of our client, Mr. Marshall S. Cogan, we are notifying your office sua sponte of a possible unintentional violation of Federal Election Commission regulation 11 C.F.R. §110.5, concerning the annual contribution limit. It appears that Mr. Cogan may have inadvertently exceeded the annual contribution limits for 1981 and 1982. We have enclosed a list that, according to his records, reflects federal election contributions for those years.

In addition to notifying the Commission sua sponte, Mr. Cogan is taking other mitigating actions. He is endeavoring to have certain contributions refunded to him, and to date has received a $2,500 refund from a 1982 contribution to the National PAC. Other refunds are being sought.

Mr. Cogan intends to cooperate in every possible way with your office on this matter.

Sincerely,

Edward S. Knight

Edward S. Knight

Enclosure

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1981 Contributions

Date		Amount
2/6	Tom Lantos for Congress	$ 1,000.00
3/18	Sen. Lloyd Bentsen Committee	1,000.00
3/20	U.S. Senate Democratic Leadership Circle	15,000.00
4/8	D.N.C. Services Corporation	5,000.00
6/18	Democratic Congressional Dinner	10,000.00
9/25	Tom Lantos for Congress	1,000.00
11/5	People for Jackson	1,000.00
12/4	Toby Moffet Committee	1,000.00

1982 Contributions

1/11	People for Jackson	1,000.00
2/3	1982 Democratic Congressional	2,500.00
3/11	Lautenberg for U.S. Senate	1,000.00
3/11	Decisions '82 - H. Samuels	1,000.00
3/18	Toby Moffet U.S. Senate	2,000.00
3/8	Committee to Re-Elect Kennedy	1,000.00
3/31	Citizens for Downey	250.00
4/2	Fund for Democratic Majority	5,000.00
4/27	National PAC	5,000.00
5/10	Democrats for the '80's	1,000.00
5/12	People for John Heinz Committee	1,500.00
9/24	Yates for Congress Committee	250.00
9/28	Kennedy for Senator	1,000.00

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FEDERAL ELECTION COMMISSION

1325 K STREET N.W
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 1526

Date Filmed 6/27/83 Camera No. --- 2

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FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

THE FOLLOWING MATERIAL IS BEING ADDED TO THE PUBLIC FILE OF CLOSED MUR 1526.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 23, 1983

Edward S. Knight, Esquire
Akin, Gump, Strauss, Hauer
and Feld
1333 New Hampshire Avenue, NW
Washington, D.C. 20036

Re: MUR 1526; Marshall S. Cogan

Dear Mr. Knight:

This is in response to your letters of May 12 and 20, 1983. Initially, you requested that the Commission refrain from placing on the public record its file in MUR 1526, an enforcement matter in which your client, Marshall S. Cogan, appeared as respondent. In the event your request was denied, you requested in the alternative that the Commission create, and include in the public file, a statement which in effect, would mitigate your client's violations. Further, if the Commission determined that a public file would be made available, you requested a period of thirty days within which you might examine the documents which would be included in that file and within which you might submit additional materials for inclusion in the record.

As you noted, the Commission routinely places on the public record the files in all closed enforcement matters. 1/ You correctly observed that this agency takes that action pursuant to statute (2 U.S.C. § 437g(a)(4)(B)(ii)) and regulations (11 C.F.R. § 111.20(a)). You suggested, however, that the cited provisions limit the material which the Commission may place on the public record to those cases which are concluded by conciliation or by a determination that the Act has not been violated.

The Commission does not read those provisions so restrictively. Indeed, it would seem highly inconsistent to

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1/ Materials which would be exempt from disclosure under 5 U.S.C. § 552(b) are withdrawn from those files before they are made public.

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require publication of "no violation" and "conciliation" cases 2/ and not to require publication of enforcement matters which are terminated, for example, by a determination of "reason to believe with no further action" or of matters in which conciliation has failed and civil action has been filed. Additionally, your argument necessarily ignores the requirements of 11 C.F.R. § 5.4(a), which, in pertinent part, state:

> In accordance with 2 U.S.C. § 438(a), the Commission shall make the following material available for public inspection and copying ... (4) Opinions of Commissioners rendered in enforcement cases and General Counsel's Reports, and non-exempt 2 U.S.C. § 437g investigatory materials will be made available no later than 30 days from the date which the respondent is notified that the Commission has voted to take no further action and to close such an enforcement file.

<u>See also</u> 11 C.F.R. § 4.4(a)(3).

Additionally, and contrary to your assertion, the "confidentiality provision" of the Act, set out at 2 U.S.C. § 437g(a)(12), is not relevant here. 11 C.F.R. § 111.21(a), the regulation which construes the confidentiality provision, specifically envisions the prohibitions set out therein as applying only to "open" cases. <u>See Explanation and Justification of Regulations Concerning January 8, 1980, Amendments to Federal Election Campaign Act of 1971</u>, 45 <u>Fed. Reg</u>. 15080, 15089 (1980). Significantly, this interpretation of the confidentiality provision has received at least the implicit approval of Congress in that regulations proposed by the Commission are subject to Congressional review and disapproval. <u>See</u> 2 U.S.C. § 438(a)(8) and 438(d).

2/ By statute and regulation the conciliation of a case requires, at the least, a finding of "reason to believe" a violation of the Act has occurred. <u>See</u> 2 U.S.C. § 437g(a)(4)(A)(i) and 11 C.F.R. § 111.18(d).

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Edward S. Knight, Esquire
Page Three

The Commission will not create, and include in its file, a statement such as the one you requested which would state that it terminated its action specifically because your client's violations were "inadvertent and de minimus," and that Mr. Cogan, by voluntarily disclosing the violations "was acting in an exemplary fashion." The characterizations of the violations are your own; the Commission made no findings in these regards. Furthermore, during the course of this matter, you frequently emphasized that, in your opinion, Mr. Cogan's violations were "inadvertent," "unintentional," or "de minimus." Your characterizations will appear in the public record and, thus, be available for public review. Additionally, in support of its recommendation that the Commission terminate its action with respect to your client, the Office of General Counsel (OGC) specifically noted that he voluntarily brought the matter to the Commission's attention; that, prior to the Commission's investigation, he sought to correct the violation; that he indicated that the making of excessive contributions was unintentional; that he cooperated fully with OGC; and that he attempted voluntarily to comply with enforcement of the Act. The memorandum containing the foregoing recitations also will appear in the public file of this case.

The public file in this case will contain all those documents required by 11 C.F.R. §§ 5.4(a)(4) and 4.4(a)(3). The file will be processed in the same manner as are the closed files in all enforcement cases. Any documents you submit will be microfilmed and included in the permanent file of this case.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Kenneth A. Gross
Associate General Counsel

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FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

END OF ADDITIONAL MATERIAL FOR CLOSED MUR 1526.

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