FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

THIS IS THE BEGINNING OF MUR # 3789

DATE FILMED 4-13-94 CAMERA NO. 2

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

AK003878

June 16, 1993

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: REFERRAL MATTER - AGRAN FOR PRESIDENT 92

Attached please find a copy of the Final Audit Report on Agran for President 92 which was released to the public on June 15, 1993.

In accordance with the Commission approved Audit Program and Materiality Thresholds, Finding A, Apparent Excessive Contributions, is being referred to your office for enforcement action.

Should you have any questions please contact Joe Stoltz or myself at 219-3720.

Attachment as stated

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

REPORT OF THE AUDIT DIVISION
ON
AGRAN FOR PRESIDENT 92

I. Background

A. Audit Authority

This report is based on an audit of Agran for President 92 (the Committee). The audit is mandated by Section 9038(a) of Title 26 of the United States Code. That section states that "after each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under Section 9037." Also Section 9039(b) of the United States Code and Section 9038.1(a)(2) of the Commission's Regulations state that the Commission may conduct other examinations and audits from time to time as it deems necessary.

In addition to examining the receipt and use of Federal funds, the audit seeks to determine if the campaign has materially complied with the limitations, prohibitions and disclosure requirements of the Federal Election Campaign Act of 1971, as amended.

B. Audit Coverage

The audit covered the period from the Committee's inception, August 21, 1991*/, through July 31, 1992. During this period, the Committee reports reflect an opening cash balance of $-0-, total receipts of $630,442, total disbursements of $593,253, and a closing cash balance of $37,189. In addition, a limited review of the Committee's transactions and disclosure reports was conducted through March 31, 1993, for purposes of determining the Committee's remaining matching fund entitlement based on its financial position.

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*/ The original Statement of Organization was filed with the Federal Election Commission August 21, 1991. The Committee opened its bank account August 6, 1991, which was the start of reported activity.

C. Campaign Organization

The Committee registered with the Federal Election Commission on August 21, 1991. The Treasurers of the Committee during the period covered by the audit were Peter J. Van Susteren from August 21, 1991 to March 31, 1992 and Christopher H. King from March 31, 1992 to the present.

The campaign established its national headquarters in Irvine, California.

To handle its financial activity, the campaign used only one bank account. From this account the campaign made approximately 1,023 disbursements. Approximately 5,728 contributions were received from 4,417 persons. These contributions totaled $335,488. (Per Committee's magnetic tape files.)

In addition to contributions, the campaign received $269,691 in matching funds from the United States Treasury. This amount represents 1.95% of the $13,810,000 maximum entitlement that any candidate could receive. The candidate was determined eligible to receive matching funds on May 14, 1992. To date, the campaign has made 2 matching funds requests. The Commission has certified 99.53% of the requested amount. For matching fund purposes, the Commission determined that Mr. Agran's candidacy ended July 15, 1992. This determination was based on Commission regulations which specify the matching payment period ends "...on the date on which the national convention of the party whose nomination a candidate seeks nominates its candidate for the office of President of the United States,..." 26 U.S.C. §9032(6); see also 11 C.F.R. §9032.6. The campaign has continued to receive matching fund payments to defray expenses incurred before July 15, 1992 and to help defray the cost of winding down the campaign.

Attachment 1 to this report is a copy of the Commission's most recent Report on Financial Activity for this campaign. The amounts shown are as reported to the Commission by the campaign.

As part of the Commission's standard audit process, an inventory of the Committee's records was conducted prior to the audit fieldwork. This inventory was to determine if the Committee's records were materially complete and in an auditable state. The inventory indicated that the records were complete and by agreement with the Committee, the audit commenced immediately following the inventory.

D. Audit Scope and Procedures

In addition to a review of the qualified campaign expenses incurred by the campaign, the audit covered the following general categories:

1. The receipt of contributions or loans in excess of the statutory limitations (see Finding II.A.);

2. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations;

3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as, the completeness and accuracy of the information disclosed;

4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed;

5. proper disclosure of campaign debts and obligations;

6. the accuracy of total reported receipts, disbursements and cash balances as compared to campaign bank records;

7. adequate recordkeeping for campaign transactions;

8. accuracy of the Statement of Net Outstanding Campaign Obligations filed by the campaign to disclose its financial condition and establish continuing matching fund entitlement (see Section III.A.);

9. the campaign's compliance with spending limitations; and

10. other audit procedures that were deemed necessary in the situation.

Unless specifically discussed below, no material non-compliance was detected. It should be noted that the Commission may pursue any of the matters discussed in this report in an enforcement action.

II. Findings and Recommendations - Non-repayment Matters

A. Apparent Excessive Contributions

Section 441a(a)(1)(A) of Title 2 of the United States Code states, in part, that no person shall make contributions to any candidate with respect to any election for Federal office which, in the aggregate, exceed $1,000.00.

Section 116.5(b) of Title 11 of the Code of Federal Regulations states, in part, the payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or political committee is a contribution unless the payment is exempted from the definition of contribution under 11 CFR 100.7(b)(8).

If the payment is not exempted, it shall be considered a contribution unless it is for the individual's transportation and normal subsistence expenses incurred by an individual, other than a volunteer, while traveling on behalf of a candidate; and, the individual is reimbursed within sixty days after the closing date of the billing statement on which the charges first appear if the payment was made using a personal credit card, or within thirty days after the date on which the expenses were incurred if a personal credit card was not used. "Subsistence expenses" include only expenditures for personal living expenses related to a particular individual traveling on committee business such as food or lodging.

During the review of the Committee's disbursements the Audit staff noted a number of reimbursements to individuals that were for various kinds of campaign activity. For subsistence and transportation expenses, the Committee did not reimburse the individuals within the time periods required by 11 CFR 116.5. Individuals were also reimbursed for other kinds of campaign expenditures, such as advertising, supplies, telephone, postage, copying, tape production, and secretarial services. It was also noted, that a number of individuals paid the transportation, travel, and other campaign expenses incurred by other individuals, including the candidate's expenses.

Contributions resulting from the untimely reimbursement of expenses incurred by individuals were added to contributions made by these individuals. The review revealed that one person made apparent excessive contributions. The individual was in excess of the limit for most of the period August 21, 1991 through January 17, 1992. The amount in excess varied depending upon when reimbursements were received. The largest amount in excess was $6,419 on November 5, 1991. At the time of fieldwork, there were no expense reimbursements outstanding. A review of FEC disclosure reports filed subsequent to fieldwork revealed no other debt to this person was reported.

This matter was discussed with the Committee during the exit conference. They were not aware of the requirements of 11 C.F.R. 116.5.

In the Interim Audit Report the Audit staff recommended that the Committee submit additional documentation to establish that the individual did not exceed the contribution limits of 2 U.S.C. §441a(a)(1)(A), or provide any other comments or documentation that the Committee believed were relevant. The Committee's response stated that all documentation of the Committee's disbursements was provided at the time of the audit and that they have nothing further to provide. The response goes on to state that "... the Committee, both during and since the conclusion of the campaign, has complied to the best of its ability with the requirements of the Federal Election Campaign Act, as amended, and the regulations relevant thereto."

Given that the Committee's response provided no additional information, there is no change in the analysis presented in the Interim Audit Report.

III. Findings and Recommendations Related to Title 26 of the United States Code

A. Determination of Net Outstanding Campaign Obligations

Section 9034.5(a) of Title 11 of the Code of Federal Regulations requires that within 15 days of the candidate's date of ineligibility, the candidate submit a Statement of Net Outstanding Campaign Obligations (NOCO) which contains, among other items, the total of all outstanding obligations for qualified campaign expenses and an estimate of necessary winding down costs.

Section 9034.1(b) of Title 11 of the Code of Federal Regulations states, in part, that if on the date of ineligibility a candidate has net outstanding obligations as defined under 11 C.F.R. §9034.5, that candidate may continue to receive matching payments provided that on the date of payment there are remaining net outstanding campaign obligations.

The NOCO statement is the basis for determining further matching fund entitlement. Mr. Agran's date of ineligibility was July 15, 1992. Consequently, he may only receive matching payments to the extent that he has net outstanding campaign obligations as defined in 11 C.F.R. §9034.5.

The Committee filed a Statement of Net Outstanding Campaign Obligations (NOCO) which reflected the Committee's financial position at July 15, 1992. The Audit staff analyzed the Committee's NOCO Statement and made adjustments to properly reflect the Candidate's cash position and to correct other misstatements. The Audit staff also took into account receipts that occurred between July 16, 1992 and August 31, 1992; winding down expenses between July 16, 1992 and March 31, 1993. The Committee's NOCO as adjusted by the Audit staff appears below.

Agran For President 92
Statement of Net Outstanding
Campaign Obligations as of July 15, 1992

ASSETS		
Cash on hand	$ 42,341.00	
Accounts Receivable	2,970.00	
Capital & Other Assets	-0-	
TOTAL ASSETS		$ 45,311.00
LIABILITIES		
Accounts Payable for Qualified Campaign Expenses as of 7/15/92 and Winding Down Expenses between 7/15/92 and 3/31/93		
TOTAL LIABILITIES		(66,071.00) a/
Net Outstanding Campaign Obligations		($ 20,760.00)

Conclusion

Between July 16, 1992 and August 31, 1992 the Committee received matching funds, individual contributions, and interest totaling $20,389.00. As of August 31, 1992, the candidate's maximum remaining matching fund entitlement was $371.00. No matching funds were received after August 31, 1992. This analysis is subject to change based on future adjustments to the NOCO statement.

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a/ Winding down expenses for September 1, 1992 through March 31, 1993 are based on Committee disclosure reports and are subject to audit verification.

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Adjusted Receipts
(Through December 31, 1992)

	Federal Matching Funds	Individual Contributions Minus Refunds	PAC's and Other Cmte Contrib Minus Refunds	Contributions from the Candidate	Candidate Loans Minus Repayments	Other Loans Minus Repayments	Other Receipts	Adjusted Total Receipts	Additional Matching Funds certified after the period covered by this release submitted 1/3/93
ocrats									
ıry Agran	$269,691	$331,631	$0	$500	$5,000	$1,029	$2,887	$610,738	$0
rry Brown	$4,239,345	$5,175,876	$0	$0	$0	$0	$4,200	$9,419,421	$0
ill Clinton	$12,518,130	$25,183,298	$5,204	$0	$0	$1	$9,219	$37,715,852	$0
m Harkin	$2,008,703	$3,057,748	$489,809	$4,533	$0	$0	$7,833	$5,568,626	$75,823
b Kerrey	$2,118,745	$3,904,622	$352,657	$0	$0	($1,225)	$5,893	$6,380,692	$50,486
ndon LaRouche	$0	$1,570,875	$0	$0	$0	$0	$0	$1,570,875	
ul Tsongas	$2,922,807	$4,934,453	$3,566	$0	$45,000	($9,575)	$0	$7,896,251	$38,266
oug Wilder	$289,026	$508,519	$750	$0	$0	$0	$1,039	$799,334	$0
l Democrats	$24,366,447	$44,667,022	$851,986	$5,033	$50,000	($9,770)	$31,071	$69,961,789	$164,575
ublicans									
'atrick Buchanan	$4,848,200	$7,144,107	$24,750	$0	$0	$0	$3,442	$12,020,499	$75,639
eorge Bush	$10,118,246	$26,997,770	$44,150	$0	$0	$0	$218,188	$37,378,354	$0
avid Duke	$0	$220,715	$0	$0	$1,000	$0	$0	$271,815	
al Republicans	$14,966,446	$34,362,592	$68,900	$0	$1,000	$0	$221,630	$49,670,668	$75,639
er Party									
Andre Marrou*	$0	$562,770	$181	$116	$15,000	$0	$0	$578,067	
Lenora Fulani	$1,935,524	$2,201,407	$0	$325	($1,258)	$1,200	$0	$4,137,198	$0
tal Other Party	$1,935,524	$2,764,177	$181	$441	$13,742	$1,200	$0	$4,715,265	$0
and Total	$41,268,417	$81,793,791	$921,067	$5,474	$64,742	($8,570)	$252,701	$124,347,722	$240,214

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Adjusted Disbursements
(Through December 31, 1992)

	Operating Expenditures Minus Offsets	Exempt Fundraising Minus Offsets	Exempt Legal/Accounting Minus Offsets	Other Disburse	Adjusted Total Disbursements	Expenditures Subject to Limit	Latest Cash On Hand	Debts Owed By the Campaign
mocrats								
Larry Agran	$598,750	$0	$0	$95	$598,845	$606,117	$10,866	$8,970
Jerry Brown	$6,399,824	$2,278,837	$204,607	$108,584	$8,991,852	$6,676,171	$143,091	$0
Bill Clinton	$27,716,791	$3,497,598	$1,909,826	$55,101	$33,179,316	$27,716,798	$2,729,467	$0
Tom Harkin	$3,825,304	$1,184,978	$170,402	$0	$5,180,684	$3,868,209	$171,990	$146,420
Bob Kerrey	$5,355,053	$1,057,895	$162,842	$23,404	$6,599,194	$5,987,258	$14,141	$31,718
Lyndon LaRouche	$1,488,853	$0	$65,915	$0	$1,554,768	$1,488,856	$16,107	$27,922
Paul Tsongas	$6,557,914	$754,978	$164,452	$0	$7,477,344	$6,963,601	$45,625	$164,288
Doug Wilder	$776,722	$6,568	$39	$0	$783,329	$783,294	$16,002	$341
tal Democrats	$52,719,211	$8,780,854	$2,678,083	$187,184	$64,365,332	$54,090,304	$3,147,289	$379,659
epublicans								
Patrick Buchanan	$11,173,605	$0	$0	$0	$11,173,605	$11,173,606	$934,729	$3,027
George Bush	$27,183,036	$5,524,000	$4,560,271	$0	$37,267,307	$27,183,037	$62,715	$190,526
David Duke	$353,838	$0	$0	$1,000	$354,838	$0	$0	$29,250
otal Republicans	$38,710,479	$5,524,000	$4,560,271	$1,000	$48,795,750	$38,356,643	$997,444	$222,803
ther Party								
Andre Marrou*	$415,576	$160,219	$0	$0	$575,795	$0	$0	$0
Lenora Fulani	$4,101,295	$0	$0	$3,235	$4,104,530	$4,124,158	$59,840	$52,024
otal Other Party	$4,516,871	$160,219	$0	$3,235	$4,680,325	$4,124,158	$59,840	$52,024
rand Total	$95,946,561	$14,465,073	$7,238,354	$191,419	$117,841,407	$96,571,105	$4,204,573	$654,486

SENSITIVE

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR #3789
STAFF MEMBER: Mary Tabor

SOURCE: INTERNALLY GENERATED

RESPONDENTS: Agran for President '92 Committee
Christopher H. King, as treasurer
Peggy Mears

RELEVANT STATUTE/
REGULATIONS: 2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
11 C.F.R. § 116.5

INTERNAL REPORTS CHECKED: Audit Documents

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was generated by an audit of the Agran for President '92 Committee ("the Committee") and Christopher H. King, as treasurer, undertaken in accordance with 26 U.S.C. § 9038(a). The Committee registered with the Commission on August 21, 1991, as the principal campaign committee of Larry Agran, a candidate for the 1992 Democratic presidential nomination. The Commission determined the candidate eligible for matching funds on May 14, 1992, and determined that his eligibility ended on July 15, 1992.

II. FACTUAL AND LEGAL ANALYSIS

A. Statutory and Regulatory Provisions

Individuals are prohibited from making contributions to candidates, their authorized committees or agents with respect to any election for federal office which, in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A). No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate in violation of any limitation imposed on contributions and expenditures. 2 U.S.C. § 441a(f).

Under 11 C.F.R. § 116.5(b), expenditures made on behalf of a political committee by an individual from his or her personal funds, or advances, are contributions unless exempt from the definition of contribution under 11 C.F.R. § 100.7(b)(8). These advances are not considered contributions if they are for an individual's personal transportation expenses, and for the usual and normal subsistence expenses of an individual who is not a volunteer, where such expenses are incurred while the individual is traveling on behalf of a candidate or party committee. Explanation and Justification for 11 C.F.R. § 116.5, 55 Fed. Reg. 26383 (June 27, 1989). This exemption only applies, however, if the individual's transportation and subsistence expenses are reimbursed within sixty days if the advance was paid by credit card transactions or thirty days in other cases. Id. An in-kind contribution will result if an individual pays the transportation or subsistence expenses of others or pays other types of campaign expenses, such as the costs of meeting rooms or telephone services, regardless of how long the reimbursement takes. Id.

The Commission adopted section 116.5 out of concern that during critical periods in a campaign when an authorized committee is experiencing financial difficulties, individuals may attempt to circumvent the contribution limitations by paying committee expenses and not expecting reimbursement for substantial periods of time. Explanation and Justification for 11 C.F.R. § 116.5, 55 Fed. Reg. 26382-3 (June 27, 1989); see also MUR 1349 (On April 6, 1982, the Commission found probable cause to believe that the Reagan for President Committee violated 2 U.S.C. § 441a(f) by waiting 81 days to reimburse a volunteer who paid $18,713 in expenses on behalf of the committee.).

B. Audit Finding

The audit review determined that Committee representative, Peggy Mears, made excessive contributions resulting from untimely reimbursed advances for travel and subsistence expenses and also advances for other campaign expenses such as supplies and services.1/ See Attachment 1. Ms. Mears was in excess of her contribution limit for most of the period from August 21, 1991 through January 17, 1992. See Attachment 2. The amount in excess varied as the Committee made reimbursements with the largest excessive amounts being $6,419 on November 5, 1991, and $3,832 on December 5, 1991. Id. All of the advances had been reimbursed by the time of the audit.

Committee representatives told the Audit staff at the exit conference following audit fieldwork that they were not aware of the requirements set by 11 C.F.R. § 116.5. The Interim Audit

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1/ Ms. Mears made a $1,000 contribution to the Committee on August 21, 1991.

Report recommended that the Committee show that Ms. Mears did not exceed the contribution limitation of 2 U.S.C. § 441a(a)(1)(A). The Committee's response to the Interim Audit Report stated that all documentation had been given to the auditors during the on-site audit and that the Committee has nothing further to provide. Attachment 3.

Ms. Mears' advances on behalf of the Committee are contributions under 11 C.F.R. § 116.5. Combined with her monetary contribution made directly to the Committee, Ms. Mears' advances exceeded her contribution limitation for most of six months. Therefore, the Office of General Counsel recommends that the Commission find reason to believe that Ms. Mears violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions in the form of advances on behalf of the Committee. This Office also recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441a(f) by knowingly accepting contributions in excess of Ms. Mears' limitation. In addition, this Office recommends that the Commission offer to enter into conciliation with Ms. Mears and the Committee prior to a finding of probable cause to believe.

III. **RECOMMENDATIONS**

1. Find reason to believe that the Committee and Christopher H. King, as treasurer, violated 2 U.S.C. § 441a(f), and enter into conciliation prior to a finding of probable cause to believe;

2. Find reason to believe that Peggy Mears violated 2 U.S.C. § 441a(a)(1)(A), and enter into conciliation prior to a finding of probable cause to believe;

3. Approve attached Factual and Legal Analyses; conciliation agreements, and appropriate letters.

8/2/93
Date

Lawrence M. Noble
General Counsel

Attachments:
1. Final Audit Report and Referral
2. Chart of Committee Reimbursements to Peggy Mears, compiled by the Audit Division
3. Committee's Response to Interim Audit Report, dated April 20, 1993
4. Factual and Legal Analyses
5. Proposed Conciliation Agreements

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Agran for President '92 Committee and) MUR 3789
Christopher H. King, as treasurer;)
Peggy Mears.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 5, 1993, the Commission decided by a vote of 6-0 to take the following actions in MUR 3789:

1. Find reason to believe that the Committee and Christopher H. King, as treasurer, violated 2 U.S.C. § 441a(f), and enter into conciliation prior to a finding of probable cause to believe.

2. Find reason to believe that Peggy Mears violated 2 U.S.C. § 441a(a)(1)(A), and enter into conciliation prior to a finding of probable cause to believe.

(continued)

3. Approve Factual and Legal Analyses; conciliation agreements, and appropriate letters, as recommended in the General Counsel's Report dated August 2, 1993.

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

Attest:

8-5-93
Date

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

Received in the Secretariat:	Mon.,	Aug. 2, 1993	11:22 a.m.
Circulated to the Commission:	Mon.,	Aug. 2, 1993	4:00 p.m.
Deadline for vote:	Thurs.,	Aug. 5, 1993	4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUGUST 11, 1993

Agran for President '92 Committee and
Christopher H. King, as treasurer
P.O. Box 159
East Irvine, CA 92650

RE: MUR 3789

Dear Mr. King:

On August 5, 1993, the Federal Election Commission found that there is reason to believe the Agran for President '92 Committee and you, as treasurer, violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of any additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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

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 Peter G. Blumberg, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Scott E. Thomas
Chairman

Enclosures
- Factual and Legal Analysis
- Procedures
- Designation of Counsel Form
- Conciliation Agreement

cc: Larry Agran

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Agran for President '92 Committee and Christopher H. King, as treasurer — MUR #3789

I. GENERATION OF THE MATTER

This matter was generated by an audit of the Agran for President '92 Committee ("the Committee") and Christopher H. King, as treasurer, undertaken in accordance with 26 U.S.C. § 9038(a). The Committee registered with the Commission on August 21, 1991, as the principal campaign committee of Larry Agran, a candidate for the 1992 Democratic presidential nomination. The Commission determined the candidate eligible for matching funds on May 14, 1992, and determined that his eligibility ended on July 15, 1992.

II. STATUTORY AND REGULATORY PROVISIONS

Individuals are prohibited from making contributions to candidates, their authorized committees or agents, with respect to any election for federal office which, in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A). No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate in violation of any limitation imposed on contributions and expenditures. 2 U.S.C. § 441a(f).

Under 11 C.F.R. § 116.5(b), expenditures made on behalf of a political committee by an individual from his or her personal funds, or advances, are contributions unless exempt from the definition of contribution under 11 C.F.R. § 100.7(b)(8). These advances are not considered contributions if they are for an individual's personal transportation expenses, and for the usual and normal subsistence expenses of an individual who is not a volunteer, where such expenses are incurred while the individual is traveling on behalf of a candidate or party committee. Explanation and Justification for 11 C.F.R. § 116.5, 55 Fed. Reg. 26383 (June 27, 1989). This exemption only applies, however, if the individual's transportation and subsistence expenses are reimbursed within sixty days if the advance was paid by credit card transactions or thirty days in other cases. Id. An in-kind contribution will result if an individual pays the transportation or subsistence expenses of others or pays other types of campaign expenses, such as the costs of meeting rooms or telephone services, regardless of how long the reimbursement takes. Id.

The Commission adopted section 116.5 out of concern that during critical periods in a campaign when an authorized committee is experiencing financial difficulties, individuals may attempt to circumvent the contribution limitations by paying committee expenses and not expecting reimbursement for substantial periods of time. Explanation and Justification for 11 C.F.R. § 116.5, 55 Fed. Reg. 26382-3 (June 27, 1989); see also MUR 1349 (On April 6, 1982, the Commission found probable cause to believe that the Reagan for President Committee violated 2 U.S.C. § 441a(f) by waiting 81 days to reimburse volunteer who paid $18,713 in expenses on behalf of the committee.).

III. AUDIT FINDING

The audit review determined that Committee representative Peggy Mears made excessive contributions resulting from untimely reimbursed advances for travel and subsistence expenses and also advances for other campaign expenses such as supplies and services.1/ Ms. Mears was in excess of her contribution limit for most of the period from August 21, 1991 through January 17, 1992. The amount in excess varied as the Committee made reimbursements with the largest excessive amounts being $6,419 on November 5, 1991, and $3,832 on December 5, 1991. All of the advances had been reimbursed by the time of the audit.

Committee representatives told the Audit staff at the exit conference following audit fieldwork that they were not aware of the requirements set by 11 C.F.R. § 116.5. The Interim Audit Report recommended that the Committee show that Ms. Mears did not exceed the contribution limitation of 2 U.S.C. § 441a(a)(1)(A). The Committee's response to the Interim Audit Report stated that all documentation had been given to the auditors during the on-site audit and that the Committee has nothing further to provide.

1/ Ms. Mears made a $1,000 contribution to the Committee on August 21, 1991.

Ms. Mears' advances on behalf of the Committee are considered contributions under 11 C.F.R. § 116.5. Combined with her monetary contribution made directly to the Committee, Ms. Mears' advances exceeded her contribution limitation for most of six months. Therefore, there is reason to believe that the Committee violated 2 U.S.C. § 441a(f) by knowingly accepting contributions in excess of Ms. Mears' limitation.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUGUST 11, 1993

Peggy Mears
50 Canyon Ridge
Irvine, CA 92715-3410

RE: MUR 3789

Dear Ms. Mears:

On August 5, 1993, the Federal Election Commission found that there is reason to believe you violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of any additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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

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 Peter G. Blumberg, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Scott E. Thomas
Chairman

Enclosures
- Factual and Legal Analysis
- Procedures
- Designation of Counsel Form
- Conciliation Agreement

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Peggy Mears
50 Canyon Ridge
Irvine, CA 92715-3410

MUR #3789

I. GENERATION OF THE MATTER

This matter was generated by an audit of the Agran for President '92 Committee ("the Committee") and Christopher H. King, as treasurer, undertaken in accordance with 26 U.S.C. § 9038(a). The Committee registered with the Commission on August 21, 1991, as the principal campaign committee of Larry Agran, a candidate for the 1992 Democratic presidential nomination. The Commission determined the candidate eligible for matching funds on May 14, 1992, and determined that his eligibility ended on July 15, 1992.

II. STATUTORY AND REGULATORY PROVISIONS

Individuals are prohibited from making contributions to candidates, their authorized committees or agents, with respect to any election for federal office which, in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A). No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate in violation of any limitation imposed on contributions and expenditures. 2 U.S.C. § 441a(f).

Under 11 C.F.R. § 116.5(b), expenditures made on behalf of a political committee by an individual from his or her personal funds, or advances, are contributions unless exempt from the definition of contribution under 11 C.F.R. § 100.7(b)(8). These advances are not considered contributions if they are for an individual's personal transportation expenses, and for the usual and normal subsistence expenses of an individual who is not a volunteer, where such expenses are incurred while the individual is traveling on behalf of a candidate or party committee. Explanation and Justification for 11 C.F.R. § 116.5, 55 Fed. Reg. 26383 (June 27, 1989). This exemption only applies, however, if the individual's transportation and subsistence expenses are reimbursed within sixty days if the advance was paid by credit card transactions or thirty days in other cases. Id. An in-kind contribution will result if an individual pays the transportation or subsistence expenses of others or pays other types of campaign expenses, such as the costs of meeting rooms or telephone services, regardless of how long the reimbursement takes. Id.

The Commission adopted section 116.5 out of concern that during critical periods in a campaign when an authorized committee is experiencing financial difficulties, individuals may attempt to circumvent the contribution limitations by paying committee expenses and not expecting reimbursement for substantial periods of time. Explanation and Justification for 11 C.F.R. § 116.5, 55 Fed. Reg. 26382-3 (June 27, 1989); see also MUR 1349 (On April 6, 1982, the Commission found probable cause to believe that the Reagan for President Committee violated 2 U.S.C. § 441a(f) by waiting 81 days to reimburse volunteer who paid $18,713 in expenses on behalf of the committee.).

III. AUDIT FINDING

The audit review determined that Committee representative Peggy Mears made excessive contributions resulting from untimely reimbursed advances for travel and subsistence expenses and also advances for other campaign expenses such as supplies and services.1/ Ms. Mears was in excess of her contribution limit for most of the period from August 21, 1991 through January 17, 1992. The amount in excess varied as the Committee made reimbursements with the largest excessive amounts being $6,419 on November 5, 1991, and $3,832 on December 5, 1991. All of the advances had been reimbursed by the time of the audit.

Committee representatives told the Audit staff at the exit conference following audit fieldwork that they were not aware of the requirements set by 11 C.F.R. § 116.5. The Interim Audit Report recommended that the Committee show that Ms. Mears did not exceed the contribution limitation of 2 U.S.C. § 441a(a)(1)(A). The Committee's response to the Interim Audit Report stated that all documentation had been given to the auditors during the on-site audit and that the Committee has nothing further to provide.

1/ Ms. Mears made a $1,000 contribution to the Committee on August 21, 1991.

Ms. Mears' advances on behalf of the Committee are considered contributions under 11 C.F.R. § 116.5. Combined with her monetary contribution made directly to the Committee, Ms. Mears' advances exceeded her contribution limitation for most of six months. Therefore, there is reason to believe that Ms. Mears violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions in the form of advances on behalf of the Committee.

DECLARATION OF PEGGY D. MEARS

I, PEGGY D. MEARS, declare as follows:

That I am over the age of eighteen years and am a resident of the City of Irvine, State of California;

That in the summer and fall of 1991, I worked as a volunteer campaign worker on the campaign of Larry Agran for the Democratic nomination for president;

That in late September, or early October, 1991, as part of my campaign duties I endeavored to establish a business relationship with Uniglobe Travel Agency in Orange County, California, for the purpose of facilitating and arranging travel plans for Mr. Agran;

That in the course of making these arrangements, and in order to open a travel account with the travel agency, the travel agency required that I give them a credit card number in order to open the account. Because Mr. Agran was then traveling, I was unable to give them Mr. Agran's credit card number, and in the interim gave them my American Express card number solely for the purpose of opening the account. The travel agency expressly told me that they would not bill to my credit card account, but rather I would be giving them Mr. Agran's credit card number as soon as I could obtain it. In fact, within approximately one week I obtained Mr. Agran's credit card number and provided this number to the agency;

That on my next American Express bill I learned for the first time that the travel agency had in fact billed my American Express account for some of Mr. Agran's travel expenses. I immediately called the agency and told them to put a stop to this. The travel agency advised me that they were in error, and that in fact they had made some additional charges which would appear on my next statement but that they would stop this practice forthwith;

That once I received my American Express bill I immediately requested reimbursement for these expenses from the Agran campaign. As is generally known, American Express requires full reimbursement of charges every month, with the risk of negative credit reporting in the event that these payments are not made. To the best of my current memory, I was in fact reimbursed by the Agran committee in a timely manner and, I paid my American Express bill in a timely manner in order to avoid any possible negative credit reporting;

That to the best of my memory my December, 1991 American Express statement contained additional travel charges, which again were the result of a mistake by the travel agency and in no way were authorized by me. I again called the travel agency and advised them of this continuing error, and they apologized for the error and advised me that they would correct it immediately;

That I left the volunteer work on the Agran campaign by the end of November, 1991;

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That at no time did I have any motive or intent to make loans, vis a vis these credit card charges to the Agran campaign, and these charges to my account occurred only through the mistake and inadvertence of the travel agency.

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

Executed this 27th day of August, 1993 at Irvine, California.

Peggy D. Mears

PEGGY D. MEARS

STATE OF CALIFORNIA)
(ss.
COUNTY OF ORANGE)

On this 27th day of August, 1993, before me, Margaret L. Mallough, the undersigned Notary Public, personally appeared Peggy D. Mears, personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged that she executed it.

WITNESS my hand and official seal.

OFFICIAL SEAL
MARGARET L. MALLOUGH
NOTARY PUBLIC - CALIFORNIA
ORANGE COUNTY
My comm. expires JAN 28, 1994

Margaret L. Mallough

September 7, 1993

TO: Mr. Peter G. Blumberg
Federal Election Committee
Washington, D.C. 20463

FROM: Agran for President '92

RE: Committee Response

This is in response to the Commission's letter of August 11, 1993, stating that the Agran for President '92 Committee violated 2 U.S.C. - 441a(f) of the Federal Election Campaign Act of 1971. In order to resolve this matter, we believe that some additional information must be taken into consideration.

The first -- and most important -- issue to be considered is that there was not a willful violation of the law. A mistake was made, but there was never an intention of violating a campaign regulation.

Although we were a very small campaign committee, we prided ourselves on the efforts made to follow all regulations and legal requirements of a campaign committee. In fact, during the on-site exit interview we were complimented by the auditors on what a good job we had done. Unfortunately, this particular regulation went unnoticed until the time of the on-site audit. Nevertheless, a mistake was made. And we understand the responsibility was on the committee to operate in a completely accurate manner.

Thank you for your time in considering this matter.

RECEIVED
F.E.C.
SECRETARIAT

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BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the matter of	)	
	)	
Agran for President '92	)	MUR 3789
Committee and Christopher H.	)	
King, as treasurer, and	)	
Peggy Mears	)	

GENERAL COUNSEL'S REPORT

I. **BACKGROUND**

On August 5, 1993, the Commission opened a MUR and found reason to believe that the Agran for President '92 Committee ("the Committee"), and Christopher H. King, as treasurer, violated 2 U.S.C. § 441a(f).1/ The Commission also found reason to believe that Peggy Mears violated 2 U.S.C. § 441a(a)(1)(A). The Commission decided to enter into conciliation with the Committee, Christopher King and Peggy Mears prior to a finding of probable cause to believe.

II. **RECOMMENDED ACTIONS IN LIGHT OF FEC v. NRA**

This Office recommends that the Commission, consistent with its November 9, 1993 decisions concerning compliance with FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), revote the determinations to open a MUR and to find reason to believe that the Agran for President '92 Committee, and Christopher H. King, as treasurer, violated 2 U.S.C. 441a(f), and that Peggy Mears violated 2 U.S.C.

1/ This matter was referred from an audit of the Committee that was conducted pursuant to 26 U.S.C. § 9038(a).

§ 441a(a)(1)(A). However, after considering the circumstances of this matter, we recommend that the Commission take no further action with respect to the Committee, Christopher King and Peggy Mears.2/

III. **FACTUAL AND LEGAL ANALYSIS**

Individuals are prohibited from making contributions to candidates, their authorized committees or agents with respect to any election for federal office which, in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A). No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate in violation of any limitation imposed on contributions and expenditures. 2 U.S.C. § 441a(f).

Under 11 C.F.R. § 116.5(b), expenditures made on behalf of a political committee by an individual from his or her personal funds, or advances, are contributions unless exempt from the definition of contribution under 11 C.F.R. § 100.7(b)(8). These advances are not considered contributions if they are for an individual's personal transportation expenses, and for the usual and normal subsistence expenses of an individual who is not a volunteer, where such expenses are incurred while the individual is traveling on behalf of a candidate or party committee. Explanation and Justification for 11 C.F.R. § 116.5, 55 Fed. Reg. 26383 (June 27, 1989). This exemption only applies,

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2/ This Office has attached the Certification in this matter dated August 5, 1993 for the Commission's information.

however, if the individual's transportation and subsistence expenses are reimbursed within sixty days if the advance was paid by credit card transactions or thirty days in other cases. Id. An in-kind contribution will result if an individual pays the transportation or subsistence expenses of others or pays other types of campaign expenses, such as the costs of meeting rooms or telephone services, regardless of how long the reimbursement takes. Id.

The audit found that a Committee representative, Peggy Mears, made excessive contributions resulting from untimely reimbursed advances for travel and subsistence expenses and also advances for other campaign expenses such as supplies and services.3/ See Attachment 1. Ms. Mears was in excess of her contribution limit for most of the period from August 21, 1991 through January 17, 1992. See Attachment 2. The amount in excess varied as the Committee made reimbursements with the largest excessive amounts being $6,419 on November 5, 1991, and $3,832 on December 5, 1991. Id. Further, Ms. Mears purchased airplane tickets to be used by other Committee employees and the candidate totaling 11,566. All of the advances had been reimbursed by the time of the audit.

Committee representatives told the Audit staff at the exit conference following audit fieldwork that they were not aware of the requirements set by 11 C.F.R. § 116.5. The

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3/ Ms. Mears made a $1,000 contribution to the Committee on August 21, 1991.

Interim Audit Report recommended that the Committee show that Ms. Mears did not exceed the contribution limitation of 2 U.S.C. § 441a(a)(1)(A). The Committee's response to the Interim Audit Report stated that all documentation had been given to the auditors during the on-site audit and that the Committee has nothing further to provide. Attachment 3.

On August 27, 1993, Ms. Mears filed a sworn statement in response to the reason to believe finding. Ms. Mears explained that the two largest charge card advances for which the Committee reimbursed her consisted of charges from a travel agency, Uniglobe Travel Agency ("Uniglobe").4/ Ms. Mears claims that Uniglobe was not authorized to place the charges on her charge card account. She states that she had given Uniglobe her American Express card number in order to reserve certain airplane tickets for the Committee, but that the actual charges were to be placed on the candidate's or the Committee's charge card. She asserted that Uniglobe inadvertently or mistakenly charged the tickets to her account, and that once she discovered the error, she informed Uniglobe of the misunderstanding, and the mistake did not repeat.5/

4/ Uniglobe placed several charges on Mears' charge account for various plane tickets. Once the charge card bill came to Ms. Mears, she paid it, and then sought reimbursement from the Committee. Documentation discovered during the audit indicates that persons other than Ms. Mears used the tickets.

5/ Uniglobe had billed her account $7,969.50 in October 1991, and $3,596.50 in November 1991. Ms. Mears states that the November charges had been processed before the discovery of the October charges.

Subsequently, this Office contacted Ms. Mears by telephone to seek corroboration of her version of the facts. On Ms. Mears' suggestion, this Office contacted Barry Goldman, the manager of Uniglobe, who said that he remembered working on the Committee's account, but could not recall whether there were any billing problems with regard to Ms. Mears' charge card. He stated that Ms. Mears' account of the facts is possible. The auditors provided this Office with Ms. Mears' detailed billing sheets from American Express of the charges to Uniglobe. This information also does not indicate whether there were any discrepancies with regard to whom should have been billed for the travel. Additionally, we note that the Committee's response to the reason to believe finding does not mention the mistaken billing. However, during subsequent communication, the Committee stated that Ms. Mears' version of the facts is accurate.

Although Ms. Mears' explanation for the billings cannot be corroborated with any information from the travel agency or the American Express billing statement, we believe that her explanation is plausible. Furthermore, Ms. Mears' claim that she instructed Uniglobe to no longer charge the airplane tickets on her account after her receipt of the first American Express bill appears to be accurate since the billing ceased after this time. Her apparent instruction to Uniglobe to cease the billings indicates that she never intended to have Uniglobe bill her account at all. Therefore, due to the circumstances of this case, such as the relatively small amount of money involved and the questions raised by Ms. Mears response, and consistent with the proper ordering of the Commission's resources and priorities, we recommend that the Commission take no further action with respect to the Committee, Christopher H. King, and Peggy Mears. See Heckler v. Chaney, 470 U.S. 821 (1985). If the Commission adopts this recommendation, we will send an admonishment letter to the Respondents emphasizing the importance of the Federal Election Campaign Act of 1971, as amended, and the Commission's regulations at 11 C.F.R. § 116.5.

IV. RECOMMENDATIONS

1. Open a MUR.

2. Find reason to believe that Agran for President '92 Committee, and Christopher H. King, as treasurer, violated 2 U.S.C. 441a(f), but take no further action.

3. Find reason to believe that Peggy Mears violated 2 U.S.C. 441a(a)(1)(A), but take no further action.

4. Approve the Factual and Legal Analyses attached to the First General Counsel's Report dated August 2, 1993.

5. Approve the appropriate letters.

6. Close the file.

3/14/94
Date

Lawrence M. Noble
General Counsel

Attachments:
1. Certification of August 5, 1993 Actions
2. Peggy Mears response
3. Committee response

Staff Assigned: Peter G. Blumberg

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Agran for President '92 Committee	)	MUR 3789
and Christopher H. King, as	)	
treasurer;	)	
Peggy Mears.	)	

<u>CERTIFICATION</u>

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on March 17, 1994, the Commission decided by a vote of 5-0 to take the following actions in MUR 3789:

1. Open a MUR.

2. Find reason to believe that Agran for President '92 Committee, and Christopher H. King, as treasurer, violated 2 U.S.C. § 441a(f), but take no further action.

3. Find reason to believe that Peggy Mears violated 2 U.S.C. § 441a(a)(1)(A), but take no further action.

4. Approve the Factual and Legal Analyses attached to the First General Counsel's Report dated August 2, 1993, as recommended in the General Counsel's Report dated March 14, 1994.

(continued)

5. Approve the appropriate letters, as recommended in the General Counsel's Report dated March 14, 1994.

6. Close the file.

Commissioners Aikens, Elliott, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioner McDonald did not cast a vote.

Attest:

3-17-94
Date

Delores Hardy
for Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat:	Mon.,	Mar. 14, 1994	11:57 a.m.
Circulated to the Commission:	Mon.,	Mar. 14, 1994	4:00 p.m.
Deadline for vote:	Thurs.,	Mar. 17, 1994	4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MARCH 23, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Agran for President '92 Committee and
Christopher H. King, as treasurer
P.O. Box 159
East Irvine, CA 92650

RE: MUR 3789

Dear Mr. King:

On August 5, 1993, the Federal Election Commission found that there is reason to believe Agran for President and you, as treasurer, violated 2 U.S.C. § 441a(f). On September 7, 1994, you submitted a response to the Commission's reason to believe findings.

As you may be aware, on October 22, 1993, the D.C. Circuit declared the Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), petition for cert. filed, (U.S. No. 93-1151, Jan. 18, 1994). Since the decision was handed down, the Commission has taken several actions to comply with the court's decision. While the Commission petitions the Supreme Court for a writ of certiorari, the Commission, consistent with that opinion, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open enforcement matters.

In this matter, on March 17, 1994, the Commission revoted to find reason to believe that Agran for President and you, as treasurer, violated 2 U.S.C. § 441a(f). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file as it pertains to Agran for President and you, as treasurer. The Commission voted to approve the Factual and Legal Analysis previously mailed to you. Please refer to that document for the basis of the Commission's decision.

The Commission reminds you that the acceptance of excessive contributions is a violation of 2 U.S.C. § 441a(f). You should take steps to ensure that this activity does not occur in the future.

The file will be made public within 30 days after this matter has been closed with respect to all other respondents involved. You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter.

If you have any questions, please contact Peter G. Blumberg, the attorney assigned to this matter, at (202) 219-3690.

For the Commission,

Trevor Potter
Chairman

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MARCH 23, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Peggy Mears
18 Wandering Rill
Irvine, CA 92715

RE: MUR 3789

Dear Ms. Mears:

On August 5, 1993, the Federal Election Commission found that there is reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A). On August 27, 1993, you submitted a response to the Commission's reason to believe findings.

As you may be aware, on October 22, 1993, the D.C. Circuit declared the Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), petition for cert. filed, (U.S. No. 93-1151, Jan. 18, 1994). Since the decision was handed down, the Commission has taken several actions to comply with the court's decision. While the Commission petitions the Supreme Court for a writ of certiorari, the Commission, consistent with that opinion, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open enforcement matters.

In this matter, on March 17, 1994, the Commission revoted to find reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file as it pertains to you. The Commission voted to approve the Factual and Legal Analysis previously mailed to you. Please refer to that document for the basis of the Commission's decision.

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The Commission reminds you that making an excessive contribution is a violation of 2 U.S.C. § 441a(a)(1)(A). You should take steps to ensure that this activity does not occur in the future.

The file will be made public within 30 days after this matter has been closed with respect to all other respondents involved. You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter.

If you have any questions, please contact Peter G. Blumberg, the attorney assigned to this matter, at (202) 219-3690.

For the Commission,

Trevor Potter
Chairman

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3789

DATE FILMED 4-13-94 CAMERA NO. 2

CAMERAMAN JMH

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