FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3991

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CAMERAMAN JMW

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AK005125

June 10, 1994

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: BROWN FOR PRESIDENT - REFERRAL MATTERS

On May 24, 1994, the Commission approved the final audit report (FAR) on Brown for President. The report was released to the public on May 31, 1994. In accordance with the Commission approved materiality thresholds, the attached findings from the final audit report are being referred to your office:

- Apparent Excessive Contributions Resulting from Staff Advances and Extensions of Credit by a Vendor and a Union

- Apparent Excessive Press Reimbursements

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions, please contact Alex Boniewicz or Joe Stoltz at 219-3720.

Attachments:

- FAR Finding II.E., Apparent Excessive Contributions Resulting from Staff Advances and Extensions of Credit by a Vendor and a Union, FAR pps 10-15 (with Attachment)

- FAR Finding III.D., Apparent Excessive Press Reimbursements, FAR pps 22-26

E. Apparent Excessive Contributions Resulting from Staff Advances and Extensions of Credit by a Vendor and a Union

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 and his authorized political committee with respect to any election for Federal office which, in the aggregate, exceed $1,000.

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any corporation or labor organization to make a contribution in connection with any election to any political office.

Section 116.5(b) of Title 11 of the Code of Federal Regulations states, in part, that 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 a political committee is a contribution unless the payment is exempted from the definition of contribution under 11 C.F.R. 100.7(b)(8).

Pursuant to 11 C.F.R. §116.5(b), if the payment is not exempted, it shall be considered a contribution by the individual unless it is for the individual's transportation expenses or for usual 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.

Sections 116.3(a) and (b) of Title 11 the Code of Federal Regulations state, in relevant part, that a commercial vendor that is not a corporation, and a corporation in its capacity as a commercial vendor may extend credit to a candidate, a political committee or another person on behalf of a candidate or political committee. An extension of credit will not be considered a contribution to the candidate or political committee provided that the credit is extended in the ordinary course of the

commercial vendor's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligations.

Further, 11 C.F.R. §116.3(c) states that in determining whether credit was extended in the ordinary course of business, the Commission will consider:

(1) Whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit;

(2) Whether the commercial vendor received prompt payment in full if it previously extended credit to the same candidate or political committee; and

(3) Whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry.

Finally, 11 C.F.R. §114.9(d) provides, in part, that persons, other than officials, members and employees, who use labor organization facilities for activity in connection with a Federal election, are required to reimburse the labor organization within a commercially reasonable time in the amount of the normal and usual rental charge for the use of the facilities.

1. Staff Advances

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 C.F.R. §116.5. Individuals were also reimbursed for other kinds of campaign expenditures, such as advertising, supplies, telephone, postage, and copying. Further, five individuals were reimbursed for the transportation, travel, and related expenses of other individuals, to include the candidate.

As part of the Audit staff's analysis, contributions resulting from the untimely reimbursement of expenses incurred by individuals were added to direct contributions made by these individuals. Our review indicated that five individuals made apparent excessive contributions. The amount in excess varied depending upon when reimbursements were made by the Committee. By summing the largest amount in excess for each individual, the Audit staff determined that the amount in excess was $76,261. At the conclusion of fieldwork, there were no expense reimbursements outstanding. Of particular note, most of the amount in excess ($41,869) occurred with respect to the Campaign Manager, Jodie Evans. The Campaign Manager utilized seven (7) different personal credit cards for both personal and campaign related expenses. The majority of expenses charged to

these accounts were for the candidate's and several campaign employees' expenses.

This matter was discussed with the Committee during the exit conference. The Audit Staff provided the Committee with a schedule of excessive amounts, a summary schedule, and a cover sheet explaining symbols and methodology. The Campaign Manager stated that the regulation had been misinterpreted by them. She also commented that the regulation and repayment periods are unfair to candidates who do not have the same access to money or credit as other candidates who have name recognition or political position. Grass roots candidates are forced to rely on the good name of Committee supporters.

In the interim audit report, the Audit staff recommended that the Committee demonstrate that the individuals did not exceed the contribution limits of 2 U.S.C. §441a(a)(1)(A), and/or were reimbursed in a timely manner as defined under 11 C.F.R. §116.5(b)(2), or submit any other comments or documentation the Committee feels may be relevant.

As part of its response to the interim audit report, a facsimile letter from the Committee's Treasurer states that "credit card charges by Jodie Evans [Campaign Manager] in the amount of $41,869 represents items used for campaign expenses." The Committee's response does not address the apparent excessive contributions of the four individuals other than the Campaign Manager.

With respect to the matter of the credit cards, the Audit staff does not dispute the Committee's assertion that the credit card charges in question represent expenditures made relative to the campaign.

The Committee's response fails to demonstrate that the individuals did not exceed the contribution limits of 2 U.S.C. §441a(a)(1)(A), and/or were reimbursed in a timely manner. Therefore, no adjustment to the interim report analysis has been made.

2. Extension of Credit by a Commercial Vendor and a Union

During the course of fieldwork, the Audit staff identified two disbursements, each to different vendors, that raised concerns with respect to the extension of credit given to the Committee.

On December 1, 1992, the Committee issued check number 8094 in the amount of $50,000 to Quarterdeck Office Systems ("Quarterdeck") for miscellaneous computer software and hardware. An attached invoice, dated 11-17-92, details the equipment and services provided; the amount of the invoice is $151,121. The

invoice is annotated as follows: "Bill adjusted to $50,000. Due Nov 30, 1992, Stanton Kaye".

Based on a review utilizing a Committee-provided, disbursement data file, the Audit staff did not note any other payments to this vendor. According to Committee representatives this equipment was used during the campaign which ended 7-15-92. No other correspondence between the vendor and the Committee has been provided.

In the other instance, on October 27, 1992, the Committee issued check number 5571, in the amount of $57,196, to Local 1199 (Drug, Hospital & Health Care Employees Union). An attached invoice, with a letter requesting payment, dated 10-28-92, details reimbursable expenses incurred by Local 1199 with respect to Edmund G. Brown Jr.'s Presidential campaign during the period 3/30/92 to 4/10/92. The expenses were for food and refreshments, rent, printing, advertising, telephone and other miscellaneous items. According to an October 12, 1992 letter from the vendor to the Committee, this invoice is a revision of a previous invoice.

The Audit staff did not note any other payments to this vendor based on a Committee-provided, disbursement data file. According to a written statement (dated 5-24-93) submitted to the Audit staff by the Campaign Manager, there was no written agreement for these expenditures, which were the result of a sudden need for meeting rooms and banquet facilities, and were incurred with respect to the New York primary. "Apparently the invoice of the charges 'fell through the cracks' and we were not billed. I contacted him several times asking for the bill so that it could be paid. As soon as we received and reviewed the bill (and after a revised invoice was issued) it was paid."

The Audit staff's concern is whether Local 1199 was reimbursed within a commercially reasonable time at the normal and usual charge. The Audit staff requested that the Committee provide additional documentation with respect to these items. On July 16, 1993, the Audit staff received a letter from Local 1199 stating that the reason for the delay in submitting the bill was the result of several mislaid invoices in the accounting department. It also notes that no bill was submitted to the Committee until these bills were recovered.

In the interim audit report, the Audit staff recommended the Committee provide additional documentation or any other comments to demonstrate that the credit extended by the commercial vendor and union were in the normal course of business and did not represent prohibited contributions.

In its response to the interim audit report, the Committee's cover letter states that "documents are attached that demonstrate these items were in the normal course of business and did not represent prohibited contributions."

The attached documentation consisted of copies of letters sent to the Committee from Local 1199 and Quarterdeck Office Systems. The letter from Local 1199, dated July 16, 1993, had previously been provided to the Audit staff and is discussed above. The letter from the Vice President of Marketing & International Sales for Quarterdeck Office Systems, dated July 21, 1993, states:

> "I have known Jodie Evans, The campaign Manager, for quite some time and in one of our conversations it was mentioned that the campaign would be needing computers. I mentioned that although Quarterdeck was not in the business of leasing computers there were some in storage that were not currently being used.
>
> No agreement was ever signed. I turned this matter over to my staff and it was verbally agreed that nothing would be done until it was decided whether the campaign was going to purchase or rent the computers from us.
>
> Jodie, her staff and my staff had discussions for several months and it was finally decided that the campaign would lease the computers for the amount that was comparable to the loss of value and pay for our service time.
>
> Since leasing computers is not our normal business, this was not billed in the 'normal course of business'. However, as soon as it was billed, it was paid."

The facsimile letter from the Committee's Treasurer states that the "[e]xtension of credit by Quarterdeck and Local 1199 represent charges to the campaign in the normal course of business and does not represent contributions of any kind."

The Committee's response did not provide any new documentation or comments to demonstrate that the credit extended by Local 1199 was in the normal course of business and did not represent prohibited contributions.

The Committee's response: (i) does not provide information relative to Quarterdeck's established procedures or past practices in approving extensions of credit; (ii) does not provide any information relative to prompt payment of previously extended credit to the Committee; and (iii) does not provide information to show that this extension of credit conformed to the usual and normal practice in the industry.

Rather, the letter provided from Quarterdeck appears to buttress the Audit staff's conclusion that credit was not extended in the ordinary course of business. The letter states that Quarterdeck "was not in the business of leasing computers." No agreement was ever signed. There were several months of discussions before the Committee decided to lease or buy the computers. The Committee benefited from the use of the equipment during the campaign until an invoice (dated 11-17-92) was submitted to the Committee for payment well after the campaign had run its course.

[redacted] FOR PRESIDENT
SCHEDULE OF 116.5 REPORT OF EXPENSES

Contributor Name	Date of Contribution	Amount of Contribution	Date Expenses Incurred	Amount in Excess of Limit *	Date Reimbursed	Amount Reimbursed	Balance Remaining in Excess of Limit
Jodie Evans	06-Sep-91	$100.00	8/23/91-10/17/91	$28,675.72	10/18/91	$13,799.14	$15,157.58
			10/20/91-11/06/91	$26,130.65	11/08/91	$555.00 **	$25,575.65
			11/08/91-11/25/91	$30,155.30	11/27/91	$24,454.01	$5,701.30
			12/08/91-12/11/91	$13,370.04	12/11/91	$25.50	$13,345.04
			12/12/91-12/26/91	$16,026.87	12/27/91	$661.24	$15,362.63
			12/28/91-01/29/92	$23,927.37	01/30/92	$6,420.09	$17,507.28
			01/30/92-02/04/92	$21,040.21	02/05/92	$6,704.43	$14,337.78
			02/08/92-02/10/92	$20,676.52	02/12/92	$106.00	$20,570.52
			02/12/92-02/21/92	$24,865.69	02/24/92	$6,442.08	$18,413.61
			02/24/92-02/24/92	$21,046.11	02/25/92	$7,435.98	$13,610.13
			02/25/92-03/02/92	$23,656.10	03/03/92	$574.00	$23,081.10
			03/03/92-03/04/92	$25,196.10	03/05/92	$797.77	$24,398.33
			03/05/92-03/07/92	$25,216.33	03/08/92	$626.00 **	$24,590.33
			03/08/92-03/19/92	$37,226.43	03/20/92	$4,388.08 **	$32,837.34
			03/20/92-03/31/92	$37,617.95	04/01/92	$4,190.75	$33,427.20
			04/01/92-04/02/92	$34,958.41	04/03/92	$7,454.20	$27,505.21
			04/03/92-04/07/92	$31,511.76	04/08/92	$756.00 **	$30,755.76
			04/08/92-04/13/92	$40,059.22	04/14/92	$423.04	$39,636.18
			04/14/92-04/14/92	$41,191.37	04/15/92	$11,455.42	$29,737.95
			—	$29,787.88	04/16/92	$1,640.67	$27,998.28
			04/16/92-04/21/92	$33,935.28	04/22/92	$1,576.88	$32,358.40
			04/22/92-05/01/92	$41,868.98 ***	05/02/92	$13,047.10	$28,809.88
			05/02/92-05/20/92	$30,291.18	05/04/92	$1,520.08	$28,771.07
			—	$28,771.07	05/06/92	$157.56	$28,989.51
			—	$28,509.51	05/08/92	$480.93	$28,028.58
			05/10/92-05/13/92	$30,306.04	05/14/92	$9,307.62	$21,089.32
			05/14/92-05/25/92	$33,142.62	05/26/92	$8,270.90	$25,071.72
			05/26/92-05/28/92	$25,750.68	05/29/92	$9,981.30	$15,776.38
			05/29/92-06/01/92	$16,515.77	06/02/92	$15,670.22	$916.74
			06/03/92-06/12/92	$5,080.99	06/14/92	$1,726.14	$3,354.85
			06/14/92-06/24/92	$8,419.30	06/25/92	$800.72	$7,618.67
			06/25/92	$7,652.67	06/26/92	$410.00 **	$7,242.67
			06/26/92-07/01/92	$9,487.02	07/02/92	$1,466.97	$8,020.95
			07/02/92-07/02/92	$11,090.12	07/07/92	$7,856.67	$3,233.55
			07/08/92-07/15/92	$5,931.30	07/16/92	$5,008.20	$923.10
			07/16/92-07/27/92	$14,330.83	07/28/92	$116.00 **	$14,206.83

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SCHEDULE OF 116.5 SUMMARY OF EXPENSES

Contributor Name	Date of Contribution	Amount of Contribution	Date Expenses Incurred	Amount in Excess of Limit *	Date Reimbursed	Amount Reimbursed	Balance Remaining in Excess of Limit
				$14,206.93	07/29/92	$477.52	$13,729.31
			—	$13,729.31	07/31/92	$60.13	$13,669.18
			07/31/92-08/03/92	$14,335.90	08/04/92	$1,066.13	$13,269.77
			08/04/92-08/21/92	$15,056.72	08/22/92	$4,246.68	$10,810.04
			08/22/92-09/19/92	$18,483.93	09/21/92	$2,077.59	$16,406.34
			—	$16,406.34	09/22/92	$89.39	$16,316.95
			09/22/92-10/06/92	$19,462.87	10/07/92	$1,375.00	$18,087.87
			—	$18,087.87	10/08/92	$2,181.17	$15,904.70
			10/09/92-10/19/92	$16,675.76	10/21/92	$21.95	$16,053.81
			10/22/92-10/27/92	$16,574.31	10/29/92	$221.34	$16,352.97
			10/29/92	$16,450.81	11/30/92	$10,000.00	$6,597.81
			11/04/92-11/07/92	$6,754.31	11/11/92	$153.95	$6,590.36
			—	$6,590.36	11/13/92	$6,146.61	$443.75
			11/13/92-11/30/92	$1,550.83	12/03/92	$4,065.49	$0.00
Joseph Scha	06-Apr-92	$100.00	01/20/92-02/06/92	$3,196.50	02/10/92	$4,168.75	$0.00
			0411/92-04/21/92	$6,881.74 ***	05/04/92	$3,019.24	$3,222.50
			—	$1,222.50	05/06/92	$4,122.50	$0.00
Linda Boudreau	06-Nov-91	$100.00	01/31/93-04/09/92	$3,291.22	04/15/92	$1,500.00	$1,791.22
			04/16/92-04/23/92	$2,684.48	04/24/92	$5,500.00	$0.00
			04/27/92-05/04/92	$10,372.56 ***	05/06/92	$4,075.26	$6,297.30
			—	$6,297.30	05/14/92	$6,055.33	$241.97
			—	$241.97	08/11/92	$1,141.97	$0.00
Michael C. Boudreau	06-Nov-91	$100.00	10/21/91-12/11/91	$783.30	12/12/92	$832.76	$0.00
			12/13/91-02/29/92	$6,296.00	03/06/92	$5,975.34	$820.89
			03/06/92-03/08/91	$5,501.24	03/09/92	$1,213.77	$4,705.86
			03/09/92-03/12/92	$10,331.85	03/13/92	$2,730.00	$8,684.66

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SCHEDULE OF 136.5 [illegible] OF [illegible]

Contributor Name	Date of Contribution	Amount of Contribution	Date Expenses Incurred	Amount in Excess of Limit *	Date Reimbursed	Amount Reimbursed	Balance Remaining in Excess of Limit
			03/14/92-03/21/92	$13,172.13 ***	03/22/92	$2,815.06	$10,357.07
			03/24/92-03/28/92	$10,426.07	03/30/92	$2,635.05	$8,291.02
			—	$8,291.02	04/01/92	$4,000.00	$4,291.02
			—	$4,291.02	04/06/92	$6,767.98	$0.00
			04/28/92-05/15/92	$1,672.72	06/03/92	$5,099.22	$0.00
			06/03/93-06/08/92	$2,317.18	06/09/92	$2,560.44	$0.00
Robert Klahn			04/11/92-05/08/92	$2,342.25	05/09/92	$500.00	$1,842.25
			05/09/92-05/24/92	$4,605.69 ***	05/26/92	$2,014.81	$2,714.32
			05/26/92-06/18/92	$3,091.32	06/22/92	$3,687.32	$0.00
			07/03/92-07/10/92	$733.05	07/11/92	$180.00	$553.05
			07/21/92-07/16/92	$1,070.55	07/21/92	$2,147.55	$0.00

Notes:

* Amount in excess is the maximum amount of contributions during the time period specified in "Date Expenses Incurred".

** The "Amount Reimbursed" contains credit adjustments made on Jodie Evans' credit card statements for goods or services returned to the vendor.

*** This amount is the highest excessive balance for this individual. The sum total of this amount for all excessive individuals is $76,261.10.

D. Apparent Excessive Press Reimbursements

Sections 9034.6(a) and (b) of Title 11 of the Code of Federal Regulations state, in part, that if an authorized committee incurs expenditures for transportation, ground services and facilities made available to media personnel, such expenditures will be considered qualified campaign expenses subject to the overall spending limitation at 11 C.F.R. §9035.1(a). Further, if reimbursement for such expenditures is received by a committee, the amount shall not exceed either: The individual's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate for the individual's pro rata share of the transportation and services made available.

An individual's pro rata share is calculated by dividing the total number of individuals to whom such transportation and services are made available into the total cost of transportation and services. The total amount of reimbursements received from an individual shall not exceed the actual pro rata cost of the transportation and services made available to that person by more than 10%.

Section 9034.6(d)(1) of Title 11 of the Code of Federal Regulations provides, in relevant part, that the committee may deduct from the amount of expenditures subject to the overall expenditure limitation of 11 CFR 9035.1(a) the amount of reimbursements received in payment for the actual cost of transportation and services described in paragraph (a) of this section. This deduction shall not exceed the amount the committee has expended for the actual cost of transportation and services provided. The committee may also deduct from the overall expenditure limitation an additional amount of reimbursements

received equal to 3% of the actual cost of transportation and services provided under this section as the administrative cost to the committee of providing such services and seeking reimbursement for them. If the committee has incurred higher administrative costs in providing these services, the committee must document the total cost incurred for such services in order to deduct a higher amount of reimbursements received from the overall expenditure limitation.

In addition, 11 C.F.R. §9034.6(d)(1) also states that amounts reimbursed that exceed the amount actually paid by the committee for transportation and services provided to media personnel under paragraph (a) of this section plus the amount of administrative costs permitted by this section up to the maximum amount that may be received under paragraph (b) shall be repaid to the Treasury.

After repeated requests for the necessary records, the Audit staff requested, by memorandum dated November 20, 1992, that subpoenas be prepared by the Office of General Counsel to the Committee and Charter Services, Inc. for the production of records as follows:

- a vendor statement (account summary of amounts billed and payments received);
- Invoices detailing each flight origination and destination, to include, but not be limited to:
- invoices, bills, etc. for the aircraft for each leg of each trip;
- invoices, bills for any other costs associated with each leg of each trip to include catering, beverages, ground transportation, meals, press filing facilities, lodging, etc.;
- a flight manifest for each leg of each trip showing every person traveling (except the flight crew) by name and any associated organization;
- working papers, computer files, etc., showing the derivation of amounts billed to the press for each leg of each trip;
- copies of bills issued to the press for each leg of each trip; and,
- records of amounts received in reimbursement for travel on the Committee charter or other aircraft, from each person for each leg of each trip.

Prior to the issuance of the subpoenas, the Committee and Charter Services, Inc. provided some of the requested material. Detailed billing statements, which show the costs of each leg of each flight as well as any food costs, were not available from Charter Services, Inc. after April, 1992. At that time, the Committee assumed this function. The Committee stated that they maintained a computerized billing system complete with leg analyses and manifests; the Committee further asserts the disc containing this information is missing. In addition, Charter Services, Inc. advised the Audit staff that they acted as a "middle-man" between the Committee and the airplane charter companies; and therefore, did not maintain any manifests detailing passengers with respect to each flight leg.

Absent a cost figure and passenger manifests for each flight, the Audit staff was unable to assess the Committee's compliance under 11 C.F.R. §9034.6.

At the Exit Conference the Audit staff reiterated its request for documentation of the Committee's procedures for handling travel billings to and reimbursements from the Press, specifically the Committee's computations/worksheets for determining amounts billed.

A request was forwarded to the Office of General Counsel, May 6, 1993, requesting enforcement of the subpoena with respect to the Committee as it relates to the press billing documentation still required. In addition, a request was included to prepare subpoenas to two individuals identified during fieldwork as associated with the Committee's press billing and reimbursement system.

Subsequent to this request, the Committee submitted additional documentation with respect to press billings. The Office of General Counsel agreed to delay subpoena enforcement in order to allow the Audit staff to evaluate the submitted materials.

Our review of these additional documents indicated that total reimbursements from the press were significantly below the overall amount the Audit staff determined could have been billed by the Committee. Although workpapers were not provided detailing the Committee's calculations of amounts billed to the press, available documents indicated the Committee intended to simply bill each press organization at 110% of cost. The Audit staff's review of amounts billed to press organizations was limited to the available documentation. Our limited review indicted that the amounts billed were reasonable. Finally, the Audit staff was aware of press receivables totaling only $14,168, which, if collected, would not alter our conclusion.

The interim audit report recommended no further action with respect to this matter.

However, as a result of our review of recent disclosure reports filed by the Committee, the Audit staff noted that the Committee had received additional reimbursements from the press, totaling $188,645, during the period April 1, 1993 through March 31, 1994. This greatly exceeded the amount of press receivables ($14,168) contained in available Committee records and presented by the Audit staff on the interim audit report NOCO statement.

The Audit staff re-evaluated the Committee's press billings and reimbursements, incorporating these additional reimbursements ($188,645). Based upon available manifests and the cost of transportation/services provided to the press, the Audit staff calculated the amount that could be billed to the press (cost plus 10%) to be $251,020. The Audit staff identified press reimbursements received through March 31, 1994, totaling $302,253.

Therefore, the Committee appears to have received reimbursements from the press totaling $51,233 ($302,253 - $251,020), in excess of the maximum billable amount under 11 C.F.R. §9034.6(b). As such, these must be refunded to the press. The Audit staff has recognized this amount ($51,233) as a payable on the NOCO presentation at Finding III.C.

In addition, the Audit staff used the revised analysis to determine if the Committee had profited from press reimbursements.

The analysis identified amounts paid by the Committee for transportation and services provided to the press totaling $228,200. Under 11 C.F.R. §9034.6(d)(1), the actual cost of transportation and services provided plus the administrative costs permitted by this section (3%, unless a greater amount is documented) would be $235,046 ($228,200 x 1.03); and, the maximum amount of reimbursement that may be received (cost plus 10%) is $251,020.

As a result, the Audit staff determined that the Committee received press reimbursements in the amount of $15,974 ($251,020 - 235,046), representing amounts in excess of that actually paid by the Committee for transportation/services provided to media personnel and, therefore, subject to payment to the U.S. Treasury.

It should be noted that the Audit staff's determination of amounts to be refunded to the press ($51,233) and of the amount payable to the Treasury ($15,974) does not consider costs for at least 11 flights for which no manifests or billing information have been provided by the Committee. Should the documentation be located for these flights, the analysis of amounts due the press and the U.S. Treasury would be significantly different.

Recommendation #2

The Audit staff recommends that the Commission make an initial determination that the Committee is required to make a payment of $15,974 to the United States Treasury pursuant to 11 C.F.R. §9034.6(d)(1). In addition the Audit staff recommends that the Commission determine that the Committee is required to refund, on a pro rata basis $51,233 to the Press.

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

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR 3991
STAFF MEMBER: Abel Móntez

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

RESPONDENTS: Brown for President, and Blaine Quick, as treasurer

Robert Klahn
Linda Bourbeau
Michael C. Bourbeau
Jodie Evans
Chromosohm Media Inc.
Quarterdeck Office Systems
Drug, Hospital & Health Care Employees Union, Local 1199

RELEVANT STATUTES/
REGULATIONS:

2 U.S.C. § 431(8)(A)(i)	2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)	2 U.S.C. § 441b(a)
2 U.S.C. § 441b(b)(2)	11 C.F.R. § 100.7(a)(1)
11 C.F.R. § 100.7(a)(4)	11 C.F.R. § 100.7(b)(8)
11 C.F.R. § 100.10	11 C.F.R. § 114.1(a)(1)
11 C.F.R. § 114.9(d)	11 C.F.R. § 116.1(c)
11 C.F.R § 116.3(a)	11 C.F.R. § 116.3(c)
11 C.F.R. § 116.4	11 C.F.R. § 116.5(b)
11 C.F.R. § 9034.6(b)	11 C.F.R. § 9034.6(d)(1)

INTERNAL REPORTS CHECKED: Audit Documents

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

Brown for President ("the Committee") registered with the Commission on September 2, 1991, as the principal campaign committee of Governor Edmund Brown, Jr., a candidate for the 1992 Democratic presidential nomination. The Commission determined the candidate eligible for matching funds on December

2, 1991, and the Committee received $4,239,345 in public funds to seek the nomination of the Democratic Party. The candidate's date of ineligibility was July 15, 1992 and pursuant to 26 U.S.C. § 9038(a), the Commission conducted an audit and examination of the Committee's receipts, disbursements and qualified campaign expenses.[1/] This matter was generated from information obtained from the audit of the Committee. 11 C.F.R. § 9038.1(c)(2). The Audit Division's referral materials are attached. See Attachment 1.

II. FACTUAL AND LEGAL ANALYSIS

A. Staff Advances

Under the Federal Election Campaign Act of 1971, as amended ("the Act"), no person may make contributions to any candidate and his or her authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A). No candidate or political committee shall knowingly accept any contribution that exceeds the contribution limitations. 2 U.S.C. § 441a(f). Moreover, no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a

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1/ On November 29, 1994, the Commission made a final determination that Governor Brown and the Committee must repay $179,049 to the United States Treasury for funds received in excess of the candidate's entitlement and for surplus funds. 26 U.S.C. §§ 9038(b)(1) and (3). The Committee made the repayment on August 31, 1992, February 7, 1995, and February 28, 1995. The Commission also determined that Governor Brown and the Committee must make a payment to the United States Treasury in the amount of $12,757 for stale-dated checks and excessive press reimbursements in order to comply with 11 C.F.R. §§ 9034.6(d)(1) and 9038.6. The Committee made the payment on March 17, 1995.

candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures. Id.

The payment by an individual from his or her personal funds for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of a political committee is a contribution. 11 C.F.R. § 116.5(b). However, two exemptions exist. First, an individual may spend an aggregate of $1,000 per election for personal transportation expenses on behalf of a candidate without counting such expenditures as contributions. 11 C.F.R. §§ 100.7(b)(8) and 116.5(b). Second, advances of personal funds will not be considered contributions if they are for the individual's personal transportation expenses or 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. 11 C.F.R. § 116.5(b); see also Explanation and Justification for 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26383 (June 27, 1989). If the individual's transportation and subsistence expenses are paid by personal credit card, they must be reimbursed within 60 days after the closing date of the billing statement on which the charge first appears, or if a personal credit card was not used, within 30 days after the date on which the expenses were incurred. Id. When an individual incurs expenses for the subsistence of others, a contribution occurs at the time the financial obligation is incurred, regardless of when the payment

is due or when the individual pays the debt. 11 C.F.R. § 116.5; see also Explanation and Justification for 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26382 (June 27, 1989).

The Commission intended section 116.5 to provide for a limited exception to the general rules governing contributions for an individual's personal transportation expenses, and for the usual and normal subsistence expenses of an individual who is not a volunteer. 11 C.F.R. § 116.5; 55 Fed. Reg. 26382-3 (June 27, 1989). The Commission also adopted the section 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 (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.).

The Commission's audit revealed evidence that four Committee staff members Robert Klahn ($4,605.69), Linda Bourbeau ($10,372.56), Michael C. Bourbeau ($13,172.13), and Jodie Evans

($41,868.98),[2] made excessive contributions to the Committee totaling $70,019.36.[3] Attachment 3; see also, Attachment 1 at 8-10. The Committee reimbursed these individuals for all of the expenses during the campaign; the Committee had made all reimbursements to these individuals by December 3, 1992.

From April 1992 to August 1992, Robert Klahn made various advances for campaign expenses such as overnight letter mailings, courier services, travel and subsistence of others, and telephone calls that resulted in contributions to the Committee. 11 C.F.R. § 116.5(b). Using his own personal credit card, Mr. Klahn also advanced money for his own travel and subsistence that was not reimbursed within 30 or 60 days. 11 C.F.R. § 116.5(b). His advances ranged from $9 to $1,510. On May 24, 1992, Mr. Klahn's excessive amount reached its highest at $4,605.69.

Michael C. Bourbeau made various advances from November 1991 to June 1992 for office expenses, telephone calls, gas, tolls, postage, reception expenses, food, satellite fees, rental cars, and printing. His advances ranged from $3.58 to $2,815.06. These advances are contributions to the Committee

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2/ The audit referral contains information on staff advances by Joseph Sohm. This Office believes that 11 C.F.R. § 116.5 is not applicable given that Joseph Sohm through his company, Chromosohm Media Inc., appears to be acting as a commercial vendor. See 11 C.F.R. § 116.5(a). Therefore, the expenditures involving Mr. Sohm and Chromosohm Media Inc. are addressed in Section II.B. of this Report.

3/ The amounts listed are the highest outstanding excessive contribution amount for each individual, and the total amount of the highest outstanding excessive contributions from these individuals to the Committee.

under 11 C.F.R. § 116.5(b). On March 21, 1992, Mr. Bourbeau's excessive amount reached its highest at $13,172.13.

From January 1992 to May 1992, Linda Bourbeau made various advances for telephone calls, parking, automobile rentals, automobile rental accident, office supplies, printing, postage, and overnight mailings.[4/] Her advances ranged from $14.50 to $4,075.26. These advances are contributions to the Committee under 11 C.F.R. § 116.5(b). On May 4, 1992, Ms. Bourbeau's excessive amount reached its highest at $10,372.56.

Jodie Evans, the Committee's campaign manager,[5/] utilized seven different personal credit cards from September 1991 to December 1992 for campaign related expenses. The majority of expenses charged to these accounts were for various campaign expenses, such as candidate's and others campaign travel and subsistence, phone calls, facsimile charges, rentals, food for receptions, photocopies, postage, and supplies. Her advances ranged from $4.75 to $5,008.20. These advances are contributions to the Committee under 11 C.F.R. § 116.5. On May 1, 1992, Ms. Evans' excessive amount reached its highest at $41,868.98.[6/]

4/ It appears that Ms. Bourbeau submitted requests for reimbursements for advances made jointly by her and her husband.

5/ We note that from September 2, 1991 to March 5, 1992, Ms. Evans was the Committee's treasurer; some of Ms. Evans' advance activity occurred during this time.

6/ The Committee's response to this issue during the audit was a January 26, 1994 letter from the Committee treasurer that simply stated "credit card charges by Jodie Evans in the amount of $41,868.98 represents items used for campaign

This Office recommends that the Commission find reason to believe that Mr. Klahn, Ms. Bourbeau, Mr. Bourbeau, and Ms. Evans violated 2 U.S.C. § 441a(a)(1)(A) by making contributions of $4,605.69, $10,372.56, $13,172.13, $41,868.98, respectively, in excess of their individual contribution limitation. This Office also recommends that the Commission find reason to believe that Brown for President and Blaine Quick, as treasurer violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions from Robert Klahn, Linda Bourbeau, Michael C. Bourbeau, and Ms. Evans.

B. In-Kind Contributions from Incorporated Commercial Vendors

A corporation is prohibited from making a contribution or expenditure in connection with any federal election to any political office. 2 U.S.C. § 441b(a). It is unlawful for any candidate or political committee to accept or receive any contribution from a corporation. Id. The provision of goods and services by a vendor for less than the usual and normal charge is a contribution. 11 C.F.R. § 100.7(a)(1)(iii). The usual and normal charge is the price of the goods in the market from which they normally would have been purchased at the time of the contribution. 11 C.F.R. § 100.7(a)(1)(iii)(B). The amount of the contribution is the difference between the usual and normal charge and the amount charged the Committee. 11 C.F.R. § 100.7(a)(1)(iii)(A).

(Footnote 6 continued from previous page)
expenses." Attachment 2.

1. Chromosohm Media Inc.

Chromosohm Media Inc. ("Chromosohm"), an incorporated commercial vendor,[7] is a special events company located in Ojai, California.[8] On February 6, 1992, Chromosohm produced a campaign event for the Committee. On February 10, 1992, in a letter on Chromosohm stationery, Joseph Sohm, Chromosohm president, billed the Committee $4,168.75 for the event for such items as production, audio visual expenses, audio recording session, equipment rental, equipment purchases, office expenses, and mailing expenses. Attachment 4 at 2. The letter stated: "The estimated retail value of your event if I billed retail would be around $75,000. The video production was worth an additional $75,000, therefore the total value of the event was around $150,000. If we stay under $25,000 I think we will have done spectacularly." Id. at 3. On February 10, 1992, the Committee issued a check for $4,168.75 to Joseph Sohm. Id. at 1.[9]

7/ Dun & Bradstreet Information Services reports: "The business name indicates that it is a corporation, however a check with the California and Nevada Corporation Commissions shows no record."

8/ The audit workpapers contain invoices that list a Los Angeles address. According to Dun & Bradstreet, the company moved from the Los Angeles address to Ojai on June 12, 1995.

9/ The Audit Division identified checks, issued on May 4, 1992 and May 6, 1992, in the amount of $5,641.74, $3,500, and $622.50 with Joseph Sohm as the payee for production, photography, and media services. The audit workpapers also contain invoices prepared on Joseph Sohm's and Chromosohm Media Inc.'s stationery. These checks and invoices do not appear on their face to indicate any irregularity in the billing of these amounts.

It appears that Chromosohm's provision of media event services to the Committee resulted in a contribution. The letter acknowledges that the "retail value" of these services was "around $150,000." The invoice specifically itemized the cost for the equipment and services. The Committee and Chromosohm apparently decided to discount the bill to $4,168.75. This discount on its face, without an explanation, is irregular. A discount below the "usual and normal charge" is a contribution if the discount is not routinely offered in the vendor's ordinary course of business to nonpolitical clients. 11 C.F.R. § 100.7(a)(1)(iii); see AO 1978-45 (a discount in the price for billboard advertising is an illegal corporate contribution). In the audit, the Committee did not provide any information on its transactions with either Joseph Sohm or Chromosohm. Therefore, this Office recommends that the Commission find reason to believe that Chromosohm Media Inc. violated 2 U.S.C. § 441b(a) by making an in-kind contribution of $145,831.25 ($150,000 - $4,168.75) as a result of Chromosohm's provision of media services at a discount below the usual and normal charge.[10/] In addition, we recommend that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution of $145,831.25 from Chromosohm Media Inc.

10/ Chromosohm could have forgiven a portion of the amount owed, if the debt had been settled in accordance with 11 C.F.R. § 116.4.

2. Quarterdeck Office Systems

Prior to the campaign, Quarterdeck Office Systems ("Quarterdeck"), an incorporated commercial vendor, located in Santa Monica, California, had computer software and hardware in storage. In a July 21, 1993 letter submitted in response to the Interim Audit Report, Quarterdeck's Vice President for Marketing & International Sales, Stanton Kaye, explained that he was a friend of the campaign manager, Jodie Evans. See Attachment 5, at 7. According to Mr. Kaye, Ms. Evans mentioned that the Committee would require computer equipment. Id.[11/] According to Mr. Kaye, he told Ms. Evans that although Quarterdeck was not in the business of leasing computer equipment, Quarterdeck had computers in storage that were not being used. Id.

According to Mr. Kaye, he turned the matter over to his staff. Id. Mr. Kaye stated that his staff and the Committee verbally agreed that nothing would be done until it was decided whether the campaign was going to purchase or rent the computers from Quarterdeck. Id. Mr. Kaye stated that the Committee and his company staff "had discussions for several months and it was finally decided that the campaign would lease the computers for the amount that was comparable to the loss of value[12/] and pay for [Quarterdeck's] service time." Id.

Quarterdeck provided the computers to the Committee. However, because of the informal nature of the arrangement

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11/ The date of this conversation is not known.

12/ It is unclear what is meant by "loss of value."

between Quarterdeck and the Committee, it is unclear when the Committee actually acquired the computers. Nevertheless, on November 17, 1992, Quarterdeck issued an invoice for $151,121. The invoice specifically itemized the equipment and services provided to the Committee. Attachment 5, at 4-6. On December 1, 1992, the Committee issued a check in the amount of $50,000 to Quarterdeck for miscellaneous computer software and hardware. Id. at 1. Attached to the check was the November 17, 1992 invoice. Id. at 4-6. The invoice was annotated as follows: "Bill adjusted to $50,000. Due Nov 30, 1992, Stanton Kaye." Id. at 4.[13/]

In its response to the Interim Audit Report, the Committee contended that this item was provided in the normal course of business and did not represent prohibited contributions. Nevertheless, Mr. Kaye's July 21, 1993 letter stated: "Since leasing computers is not our normal business, this was not billed in the 'normal course of business.' However, as soon as it was billed, it was paid." Id. at 7.

It appears that Quarterdeck's leasing of the computers to the Committee resulted in a contribution. The original invoice stated that the Committee owed $151,121 for the equipment and services provided. The invoice specifically itemized the cost for the equipment and services. The Committee and Mr. Kaye apparently decided to discount the bill to $50,000. This

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13/ After the $50,000 check was issued on December, 1, 1992, Quarterdeck provided the Committee with an invoice, dated December 4, 1992, showing that the amount due was $50,000. Attachment 5 at 2.

discount on its face, without an explanation, is irregular. A discount below the "usual and normal charge" is a contribution if the discount is not routinely offered in the vendor's ordinary course of business to nonpolitical clients. 11 C.F.R. § 100.7(a)(1)(iii); see AO 1978-45. In the audit, the Committee and Quarterdeck failed to provide any information on the reasons for the discount. Therefore, this Office recommends that the Commission find reason to believe that Quarterdeck Office Systems violated 2 U.S.C. § 441b(a) by making an in-kind contribution of $101,121 ($151,121 - $50,000) as a result of the Committee's use of computer software and hardware at a discount below the usual and normal charge.[14/] In addition, we recommend that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution of $101,121 from Quarterdeck Office Systems.

C. Labor Organization Expenditures and Use of Labor Organization Facilities

A "contribution or expenditure" includes "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value" to any candidate or campaign committee in connection with a federal election. 2 U.S.C. § 441b(b)(2); see also 11 C.F.R. § 114.1(a)(1). The Act provides that it is unlawful for any labor organization to make a contribution or expenditure in connection with any federal election. 2 U.S.C. § 441b(a).

14/ Quarterdeck could have forgiven a portion of the amount owed, if the debt had been settled in accordance with 11 C.F.R. § 116.4.

Furthermore, candidates and political committees may not knowingly accept or receive such prohibited contributions. Id. However, the Commission's regulations provide a "safe harbor" for political committees and labor organizations, if a person[15/] (other than an official, member and employee of the labor organization) uses labor organization facilities for activity in connection with a Federal election. 11 C.F.R. § 114.9(d). Nevertheless, the person is required to reimburse the labor organization within a commercially reasonable time in the amount of the normal and usual rental charge for the use of the facilities. Id.; 11 C.F.R. 100.7(a)(1)(iii)(B).

The New York primary was held on April 7, 1992. To facilitate its participation in the primary, the Committee used the facilities of the Drug, Hospital & Health Care Employees Union, Local 1199 ("the Union") from March 30, 1992 to April 10, 1992. The Committee incurred expenses for food and refreshments, rent, printing, advertising, telephone, staff compensation, and other miscellaneous items.

According to a letter written by a Union official, dated October 12, 1992, Union and Committee officials had a conversation on October 9, 1992 concerning two amounts owed by the Committee. Attachment 6 at 2. The Union submitted an invoice to the Committee, with a letter, dated October 28, 1992, requesting payment. Id. at 3. This invoice detailed the expenses incurred by the Union for the Committee. Id. at 4-5.

15/ The definition of "person" includes any committee. See 11 C.F.R. § 100.10.

It appears that the Committee a day earlier, on October 27, 1992, had issued a check in the amount of $57,196 to the Union. Id. at 1.

In a May 24, 1993 written statement to the auditors, the Committee stated that it had no written agreement for these expenditures, which were the result of a sudden need for meeting rooms and banquet facilities, and were incurred with respect to the New York primary. Id. at 6. In the statement, the Committee stated: "Apparently the invoice of the charges 'fell through the cracks' and we were not billed. [The Committee contacted a union official] several times asking for the bill so that it could be paid. As soon as [the Committee] received and reviewed the bill (and after a revised invoice was issued) it was paid." Id.

In its response to the Interim Audit Report, the Committee submitted a July 16, 1993, letter from Dennis Rivera, the president of the Union. Id. at 7. In the letter, Mr. Rivera stated that the reason for the Union's delay in submitting the bill was the result of several mislaid invoices in the accounting department. Id. The letter also stated that no bills were submitted to the Committee until these invoices were recovered. Id. Moreover, the Committee maintains that it requested several times that the Union send the bill to the Committee so that it could pay for the expenses. Id. at 6.

The amount invoiced to the Committee included two types of expenses: (1) costs for the use of the Union's facilities; and (2) expenses that the Union incurred on behalf of the Committee.

A total of $18,198.60 appears to be associated with the use of the Union's facilities. The Union billed the Committee: $11,650.00 for printing at its print shop, $5,925 for the renting for Union rooms and auditorium, and $623.60 for long distance telephone charges. Id. at 4. The Union also made $39,497.37 in expenditures on behalf of the Committee:

WSKQ Radio Spots	$ 2,150.00
1199 Per Diem	$ 1,446.14
Ardeon Realty Staff O/T	$ 1,482.01
American Presort	$ 442.85
Hobb Electrical Supply	$ 230.49
Ryder Truck Rental	$ 703.53
Cash (Victory Party)	$ 2,488.10
Manhattan Ford NY	$ 254.81
Rental Truck Parking	$ 104.50
Food/Refreshments	$11,853.65
Toy Balloons	$ 860.59
Prompt Signs	$ 899.56
Milford Plaza Hotel	$ 500.00
Philmark Lithographics	$ 7,685.75
Adirondack Rents	$ 4,995.72
Ace Audio Visual Co.	$ 3,399.57

Id. at 4-5.

The Committee has explained that the Committee was not billed in a timely manner because the invoices had been mislaid. The Office believes that this explanation is a mitigating factor for the $18,198.60 in expenditures that appear to be associated with the use of the Union's facilities. 11 C.F.R. § 114.9(d). The fact that the Committee was not billed over several months appears to be the result of a mistake. The Committee paid the bill when it received the bill. Thus, this Office recommends that the Commission find reason to believe that Drug, Hospital & Health Care Employees Union, Local 1199 violated 2 U.S.C.

§ 441b(a) by making a $18,198.60 in-kind contribution to Brown for President, but take no further action. In addition, we recommend that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution of $18,198.60 from the Union, but take no further action.

However, for the $39,497.37 in goods and services that do not appear to be associated with the use of the Union's facilities,[16/] this Office believes that the Union's provision of these goods and services for no charge for six months results in an in-kind contribution to the Committee. 11 C.F.R. § 100.7(a)(1)(iii). Therefore, this Office recommends that the Commission find reason to believe that Drug, Hospital & Health Care Employees Union, Local 1199 violated 2 U.S.C. § 441b(a) by making a $39,497.37 in-kind contribution to Brown for President. In addition, we recommend that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution of $39,497.37 from the Union.

D. Excessive Travel Reimbursements from the Media

Pursuant to 11 C.F.R. § 9034.6, a publicly-funded presidential committee that provides travel-related services to the media may charge for the services and accept resulting

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16/ During the audit process, the Committee and the Union did not explain the exact nature of these expenses. On behalf of the Committee, the Union paid various vendors, such as a hotel, vehicle rental company, audio visual company, lithographics, automobile company, and rental company. The Union also provided cash for a victory party and paid for balloons, food and refreshments.

reimbursements. However, the reimbursements may not exceed the pro rata portion of the actual cost (or a reasonable estimate of the pro rata share) plus 10%. Id. If the committee receives more than 110% of the actual cost from the media, that excess amount must be returned to the media on a pro rata basis. Explanation and Justification for 11 C.F.R. § 9034.6, 56 Fed. Reg. 35906 (1991). The committee may then deduct from its expenditures, subject to the overall expenditure limitation, the amount of reimbursement received, not to exceed the actual cost plus 3% for administrative costs. 11 C.F.R. § 9034.6(d)(1).[17/] If the amount reimbursed exceeds the actual cost plus administrative costs, the difference must be paid to the United States Treasury. Id. This regulation recognizes that reimbursements from the media may cover actual transportation costs and the costs of administering a transportation program, but should not result in a primary candidate's committee making a profit. See Explanation and Justification of 11 C.F.R. § 9034.6, 56 Fed. Reg. 35906 (July 29, 1991).

The audit found that the Committee paid $228,200 for transportation and services provided to the media. Attachment 1 at 14. Under the regulations, the maximum amount that could have been billed to the media was $251,020 ($228,200 + 10%). See 11 C.F.R. § 9034.6(d)(1). The audit also found that the Committee received media reimbursements totaling

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17/ If a committee has incurred higher administrative costs in providing these services, it must document the total cost incurred for such services in order to deduct a higher amount of reimbursements received. 11 C.F.R. § 9034.6(d)(1).

$302,253 for transportation services. Attachment 1 at 14. Therefore, the audit found that the Committee had overcharged the media $51,233 ($302,253 - $251,020) for travel-related services. Id. at 14. The Commission made an initial determination that the Committee must make a pro rata refund of $51,233 to the media. See 11 C.F.R. § 9038.2(c)(1).

The cost of transportation and services provided plus the administrative costs allowed under the regulations was $235,046 ($228,200 + 3%). Therefore, the audit found that the Committee received media reimbursements in excess of the amount actually paid by the Committee for the media's transportation services and the administrative costs, totaling $15,974 ($251,020 - $235,046). Attachment 1 at 14. Therefore, the Commission made an initial determination that the Committee must pay that amount to the United States Treasury pursuant to 11 C.F.R. § 9034.6(d)(1). See 11 C.F.R. § 9038.2(c)(1).

In response to the Final Audit Report, the Committee submitted additional manifests related to transportation provided to the media. This information indicated that the Committee actually paid $282,359 for transportation and services. Attachment 7. Under the regulations, the maximum amount that could have been billed to the media was $310,595 ($282,359 + 10%). See 11 C.F.R. § 9034.6(b). The Committee had received media reimbursements totaling $302,253 for transportation services. Therefore, the media reimbursements were less than the amount that could have been billed. Id. In the Statement of Reasons Supporting the Final Repayment

Determination, the Commission concluded that no refunds to the media were required. Attachment 8.

However, the Committee's response to the Final Audit Report revealed that the Committee received reimbursements in excess of the 3% allowance for administrative costs. The actual cost of transportation and services provided plus the administrative costs allowed under the regulation was $290,830 ($282,359 + 3%). Attachment 6; 11 C.F.R. § 9034.6(d)(1). Media reimbursements from the media totaled $302,253. Thus, the Committee received media reimbursements of $11,423 ($302,253 - $290,830) in excess of the amount actually paid by the Committee for the media's transportation services and the administrative costs. Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Committee violated 11 C.F.R. § 9034.6 by accepting reimbursements in excess of the 3% allowance for administrative costs.

In the Statement of Reasons Supporting the Final Repayment Determination, the Commission concluded that the Committee must pay $11,423 to the United States Treasury, representing the reimbursements in excess of the 3% allowance for administrative costs. 11 C.F.R. § 9034.6(d)(1); Attachment 8. The Committee paid this amount to the Commission on March 17, 1995. Because the Committee has paid the excessive reimbursements to the Treasury, we recommend that the Commission take no further action.

III. CONCILIATION AND CIVIL PENALTY

IV. RECOMMENDATIONS

1. Find reason to believe that Robert Klahn, Joseph Sohm, Linda Bourbeau, Michael C. Bourbeau, and Jodie Evans violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to Brown for President, and enter into conciliation prior to a finding of probable cause to believe;

2. Find reason to believe that Brown for President and Quick Blaine, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions from Robert Klahn, Linda Bourbeau, Michael C. Bourbeau, and Jodie Evans, and enter into conciliation prior to a finding of probable cause to believe;

3. Find reason to believe that Chromosohm Media Inc. violated 2 U.S.C. § 441b(a) by making an in-kind contribution of $145,831.25 to Brown for President, and enter into conciliation prior to a finding of probable cause to believe;

4. Find reason to believe that Brown for President violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution of $145,831.25 from Chromosohm Media Inc., and enter into conciliation prior to a finding of probable cause to believe;

5. Find reason to believe that Quarterdeck Office Systems violated 2 U.S.C. § 441b(a) by making an in-kind contribution of $101,121 to Brown for President, and enter into conciliation prior to a finding of probable cause to believe;

6. Find reason to believe that Brown for President violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution of $101,121 from Quarterdeck Office Systems, and enter into conciliation prior to a finding of probable cause to believe;

7. Find reason to believe that Drug, Hospital & Health Care Employees Union, Local 1199 violated 2 U.S.C. § 441b(a) by making an in-kind contribution of $18,198.60 to Brown for President, but take no further action;

8. Find reason to believe that Brown for President violated 2 U.S.C. 441b(a) by accepting an in-kind contribution of $18,198.60 from the Drug, Hospital & Health Care Employees Union, Local 1199, but take no further action;

9. Find reason to believe that Drug, Hospital & Health Care Employees Union, Local 1199 violated 2 U.S.C. § 441b(a) by making an in-kind contribution of $39,497.37 to Brown for President, and enter into conciliation prior to a finding of probable cause to believe;

10. Find reason to believe that Brown for President violated 2 U.S.C. 441b(a) by accepting an in-kind contribution of $39,497.37 from the Drug, Hospital & Health Care Employees Union, Local 1199, and enter into conciliation prior to a finding of probable cause to believe;

11. Find reason to believe that Brown for President violated 11 C.F.R. § 9034.6, but take no further action;

12. Approve the attached Factual and Legal Analyses,

13. Approve the attached proposed conciliation agreements; and

14. Approve the appropriate letters.

7/21/95
Date

Lawrence M. Noble
General Counsel

Attachments:
1. Referral Materials
2. Blaine Quick, Committee treasurer, letter, dated January 26, 1994.
3. Audit Analysis of Staff Advances
4. Chromosohm Media, Inc. invoice and letter
5. Quarterdeck Office Systems invoices and letters
6. Drug, Hospital & Health Care Employees Union, Local 1199 invoices and letters.
7. Committee response to the Final Audit Report, received June 24, 1993.
8. Statement of Reasons Supporting the Final Repayment Determination
9. Proposed Factual and Legal Analyses
10. Proposed Conciliation Agreements

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS
COMMISSION SECRETARY

DATE: JULY 27, 1995

SUBJECT: MUR 3991 - FIRST GENERAL COUNSEL'S REPORT DATED JULY 21, 1995.

The above-captioned document was circulated to the Commission on Monday, July 24, 1995 at 11:00 a.m.

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

Commissioner Aikens	XXX
Commissioner Elliott	XXX
Commissioner McDonald	
Commissioner McGarry	
Commissioner Potter	XXX
Commissioner Thomas	XXX

This matter will be placed on the meeting agenda for Tuesday, August 1, 1995.

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

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3991
Brown for President, and	)	
Blaine Quick, as treasurer;	)	
Robert Klahn;	)	
Linda Bourbeau;	)	
Michael C. Bourbeau;	)	
Jodie Evans;	)	
Chromosohm Media Inc.;	)	
Quarterdeck Office Systems;	)	
Drug, Hospital & Health Care	)	
Employees Union, Local 1199	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on August 16, 1995, do hereby certify that the Commission took the following actions in MUR 3991:

1. Decided by a vote of 5-0 to find reason to believe that Robert Klahn, Joseph Sohm, Linda Bourbeau, Michael C. Bourbeau, and Jodie Evans violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to Brown for President, but take no further action with respect to these respondents.

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

(continued)

2. Decided by a vote of 5-0 to

a) Find reason to believe that Brown for President, and Blaine Quick, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions from Robert Klahn, Linda Bourbeau, Michael C. Bourbeau, and Jodie Evans, and enter into conciliation prior to a finding of probable cause to believe;

b) Find reason to believe that Chromosohm Media Inc. violated 2 U.S.C. § 441b(a) by making an in-kind contribution of $145,831.25 to Brown for President, and enter into conciliation prior to a finding of probable cause to believe;

c) Find reason to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution of $145,831.25 from Chromosohm Media Inc. and enter into conciliation prior to a finding of probable cause to believe;

d) Find reason to believe that Quarterdeck Office Systems violated 2 U.S.C. § 441b(a) by making an in-kind contribution of $101,121 to Brown for President, and enter into conciliation prior to a finding of probable cause to believe;

(continued)

e) Find reason to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution of $101,121 from Quarterdeck Office Systems, and enter into conciliation prior to a finding of probable cause to believe;

f) Find reason to believe that Drug, Hospital & Health Care Employees Union, Local 1199 violated 2 U.S.C. § 441b(a) by making an in-kind contribution of $18,198.60 to Brown for President, and enter into conciliation prior to a finding of probable cause to believe;

g) Find reason to believe that Brown for President, and Blaine Quick, as treasurer, violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution of $18,198.60 from the Drug, Hospital & Health Care Employees Union, Local 1199, and enter into conciliation prior to a finding of probable cause to believe;

h) Find reason to believe that Brown for President, and Blaine Quick, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11.

(continued)

i) Find reason to believe that Drug, Hospital & Health Care Employees, Local 1199 violated 2 U.S.C. § 441b(a) by making an in-kind contribution of $39,497.37 to Brown for President, and enter into conciliation prior to a finding of probable cause to believe;

j) Find reason to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution of $39,497.37 from the Drug, Hospital & Health Care Employees Union, Local 1199, and enter into conciliation prior to a finding of probable cause to believe;

k) Find reason to believe that Brown for President and Blaine Quick, as treasurer, violated 11 C.F.R. § 9034.6, but take no further action;

l) Approve the Factual and Legal Analyses attached to the General Counsel's July 21, 1995 report

m) Approve the proposed conciliation agreements recommended in the General Counsel's report dated July 21, 1995

(continued)

n) Approve the appropriate letters, including admonishment letters to the individuals noted in recommendation number one in the General Counsel's report dated July 21, 1995.

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

Attest:

8-22-95
Date

Marjorie W. Emmons
Secretary of the Commission

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 23, 1995

SENSITIVE

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Kim Bright-Coleman
Associate General Counsel

Lorenzo Holloway
Assistant General Counsel

Abel Móntez
Attorney

SUBJECT: MUR 3991 (Brown for President)
Rescission of reason to believe finding

This memorandum is being circulated on a 24 Hour Tally Vote Basis to rescind a finding in MUR 3991 with regard to Joseph Sohm. This memorandum is being circulated on a shorten vote period in order to expedite Commission notification to the other respondents in MUR 3991. During the Commission's Executive Session on August 16, 1995, the Commission by a vote of 5-0 found reason to believe that Joseph Sohm violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive contribution to Brown for President, but take no further action. The Commission also approved an admonishment letter to Joseph Sohm.

In addition, the Commission determined that there is reason to believe Chromosohm Media Inc. violated 2 U.S.C. § 441b(a) by making an in-kind contribution to Brown for President. The findings involving Mr. Sohm and Chromosohm Media Inc. involve the same transactions. Therefore, this Office recommends that the Commission rescind its finding that there is reason to believe that Joseph Sohm violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive contribution to Brown for President. Furthermore, this Office recommends that the Commission rescind its approval of an admonishment letter to Joseph Sohm.

RECOMMENDATIONS

1. Rescind the finding of August 16, 1995 that there is reason to believe Joseph Sohm violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to Brown for President; and

2. Rescind the approval of an admonishment letter to Joseph Sohm.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Brown for President.	)	MUR 3991

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 24, 1995, the Commission decided by a vote of 6-0 to take the following actions in MUR 3991:

1. Rescind the finding of August 16, 1995 that there is reason to believe Joseph Sohm violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to Brown for President.

2. Rescind the approval of an admonishment letter to Joseph Sohm.

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

Attest:

8-25-95
Date

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

Received in the Secretariat: Wed., Aug. 23, 1995 12:58 p.m.
Circulated to the Commission: Wed., Aug. 23, 1995 4:00 p.m.
Deadline for vote: Thurs., Aug. 24, 1995 4:00 p.m.

bjr

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1995

Blaine Quick
Treasurer
Brown for President
444 S. Occidental Blvd. #421
Los Angeles, CA 90057

RE: MUR 3991
Brown for President and
Blaine Quick, as treasurer

Dear Mr. Quick:

On August 16, 1995, the Federal Election Commission found that there is reason to believe that Brown for President Committee and you, as treasurer, violated 2 U.S.C. §§ 441a(f), 434(b)(8), and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended (the "Act") and 11 C.F.R. §§ 9034.6 and 104.11. The 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 the Committee and you, as treasurer. 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 demonstrating that no further action should be taken against the Committee and you, as treasurer, 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 toward 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 pre-probable 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 enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Abel Móntez, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Danny L. McDonald

Danny L. McDonald
Chairman

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

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Brown for President and Blaine Quick, as treasurer

MUR: 3991

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). Brown for President ("the Committee") registered with the Federal Election Commission ("the Commission") on September 2, 1991, as the principal campaign committee of Governor Edmund Brown, Jr., a candidate for the 1992 Democratic presidential nomination. Pursuant to 26 U.S.C. § 9038(a), the Commission conducted an audit and examination of the Committee's receipts, disbursements and qualified campaign expenses.

A. Staff Advances

Under the Federal Election Campaign Act of 1971, as amended ("the Act"), no person may make contributions to any candidate and his or her authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A). No candidate or political committee shall knowingly accept any contribution that exceeds the contribution limitations. 2 U.S.C. § 441a(f). Moreover, no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a

candidate, in violation of any limitation imposed on contributions and expenditures. Id.

The payment by an individual from his or her personal funds for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of a political committee is a contribution. 11 C.F.R. § 116.5(b). However, two exemptions exist. First, an individual may spend an aggregate of $1,000 per election for personal transportation expenses on behalf of a candidate without counting such expenditures as contributions. 11 C.F.R. §§ 100.7(b)(8) and 116.5(b). Second, advances of personal funds will not be considered contributions if they are for the individual's personal transportation expenses or 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. 11 C.F.R. § 116.5(b); see also Explanation and Justification for 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26383 (June 27, 1989). If the individual's transportation and subsistence expenses are paid by personal credit card, they must be reimbursed within 60 days after the closing date of the billing statement on which the charge first appears, or if a personal credit card was not used, within 30 days after the date on which the expenses were incurred. Id. When an individual incurs expenses for the subsistence of others, a contribution occurs at the time the financial obligation is incurred, regardless of when the payment is due or when the individual pays the debt. 11 C.F.R. § 116.5;

see also Explanation and Justification for 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26382 (June 27, 1989).

The Commission intended section 116.5 to provide for a limited exception to the general rules governing contributions for an individual's personal transportation expenses, and for the usual and normal subsistence expenses of an individual who is not a volunteer. 11 C.F.R. § 116.5, 55 Fed. Reg. 26382-3 (June 27, 1989). The Commission also adopted section 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 (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.).

The Commission's audit revealed evidence that four Committee staff members Robert Klahn ($4,605.69), Linda Bourbeau ($10,372.56), Michael C. Bourbeau ($13,172.13), and Jodie Evans ($41,868.98), made excessive contributions to the Committee totaling $70,019.36. The amounts listed are the highest outstanding excessive contribution amount for each individual, and the total amount of the highest outstanding excessive contributions from these individuals to the Committee. The Committee reimbursed these individuals for all of the expenses

during the campaign; the Committee had made all reimbursements to these individuals by December 3, 1992.

From April 1992 to August 1992, Robert Klahn made various advances for campaign expenses, such as overnight letter mailings, courier services, travel and subsistence of others, and telephone calls that resulted in contributions to the Committee. 11 C.F.R. § 116.5(b). Using his own personal credit card, Mr. Klahn also advanced money for his own travel and subsistence that was not reimbursed within 30 or 60 days. 11 C.F.R. § 116.5(b). His advances ranged from $9 to $1,510. On May 24, 1992, Mr. Klahn's excessive amount reached its highest at $4,605.69.

Michael C. Bourbeau made various advances from November 1991 to June 1992 for office expenses, telephone calls, gas, tolls, postage, reception expenses, food, satellite fees, rental cars, and printing. His advances ranged from $3.58 to $2,815.06. These advances are contributions to the Committee under 11 C.F.R. § 116.5(b). On March 21, 1992, Mr. Bourbeau's excessive amount reached its highest at $13,172.13.

From January 1992 to May 1992, Linda Bourbeau made various advances for telephone calls, parking, automobile rentals, automobile rental accident, office supplies, printing, postage, and overnight mailings. Ms. Bourbeau submitted requests for reimbursements for advances made jointly by her and her husband. Her advances ranged from $14.50 to $4,075.26. These advances are contributions to the Committee under 11 C.F.R. § 116.5(b).

On May 4, 1992, Ms. Bourbeau's excessive amount reached its highest at $10,372.56.

Jodie Evans, the Committee's campaign manager, utilized seven different personal credit cards from September 1991 to December 1992 for campaign related expenses. From September 2, 1991 to March 5, 1992, Ms. Evans was the Committee's treasurer; some of Ms. Evans' advance activity occurred during this time. The majority of expenses charged to these accounts were for various campaign expenses, such as candidate's and others' campaign travel and subsistence, phone calls, facsimile charges, rentals, food for receptions, photocopies, postage, and supplies. Her advances ranged from $4.75 to $5,008.20. These advances are contributions to the Committee under 11 C.F.R. § 116.5. On May 1, 1992, Ms. Evans' excessive amount reached its highest at $41,868.98.

Therefore, there is reason to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions from Robert Klahn, Linda Bourbeau, Michael C. Bourbeau, and Ms. Evans.

B. In-Kind Contributions from Incorporated Commercial Vendors

It is unlawful for any corporation to make a contribution or expenditure in connection with any federal election to any political office. 2 U.S.C. § 441b(a). It is unlawful for any candidate or political committee to accept or receive any contribution from a corporation. Id. The provision of goods and services by a vendor for less than the usual and normal

charge is a contribution. 11 C.F.R. § 100.7(a)(1)(iii). The usual and normal charge is the price of the goods in the market from which they normally would have been purchased at the time of the contribution. 11 C.F.R. § 100.7(a)(1)(iii)(B). The amount of the contribution is the difference between the usual and normal charge and the amount charged the Committee. 11 C.F.R. § 100.7(a)(1)(iii)(A).

1. Chromosohm Media Inc.

Chromosohm Media Inc. ("Chromosohm"), an incorporated commercial vendor, is a special events company located in Ojai, California. During the campaign, Chromosohm was located in Los Angeles, California. On February 6, 1992, Chromosohm produced a campaign event for the Committee. On February 10, 1992, in a letter on Chromosohm stationery, Joseph Sohm, billed the Committee $4,168.75 for the event for such items as production, audio visual expenses, audio recording session, equipment rental, equipment purchases, office expenses, and mailing expenses. The letter stated: "The estimated retail value of your event if I billed retail would be around $75,000. The video production was worth an additional $75,000, therefore the total value of the event was around $150,000. If we stay under $25,000 I think we will have done spectacularly." On February 10, 1992, the Committee issued a check for $4,168.75 to Joseph Sohm.

Chromosohm's provision of media event services to the Committee resulted in a contribution. The letter acknowledges that the "retail value" of these services was "around $150,000."

The invoice specifically itemized the cost for the equipment and services. The Committee and Chromosohm apparently decided to discount the bill to $4,168.75. This discount on its face, without an explanation, is irregular. A discount below the "usual and normal charge" is a contribution if the discount is not routinely offered in the vendor's ordinary course of business to nonpolitical clients. 11 C.F.R. § 100.7(a)(1)(iii); see AO 1978-45 (a discount in the price for billboard advertising is an illegal corporate contribution). In the audit, the Committee did not provide any information on its transactions with either Joseph Sohm or Chromosohm. Therefore, there is reason to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution of $145,831.25 ($150,000 - $4,168.75) as a result of Chromosohm's provision of media services at a discount below the usual and normal charge.

2. Quarterdeck Office Systems

Prior to the campaign, Quarterdeck Office Systems ("Quarterdeck"), an incorporated commercial vendor, located in Santa Monica, California, had computer software and hardware in storage. In a July 21, 1993 letter submitted in response to the Interim Audit Report, Quarterdeck's Vice President for Marketing & International Sales, Stanton Kaye, explained that he was a friend of the campaign manager, Jodie Evans. According to Mr. Kaye, Ms. Evans mentioned that the Committee would require computer equipment. According to Mr. Kaye, he told Ms. Evans that although Quarterdeck was not in the business of leasing

computer equipment, Quarterdeck had computers in storage that were not being used.

According to Mr. Kaye, he turned the matter over to his staff. Mr. Kaye stated that his staff and the Committee verbally agreed that nothing would be done until it was decided whether the campaign was going to purchase or rent the computers from Quarterdeck. Mr. Kaye stated that the Committee and his company staff "had discussions for several months and it was finally decided that the campaign would lease the computers for the amount that was comparable to the loss of value and pay for [Quarterdeck's] service time."

Quarterdeck provided the computers to the Committee. However, because of the informal nature of the arrangement between Quarterdeck and the Committee, it is unclear when the Committee actually acquired the computers. Nevertheless, on November 17, 1992, Quarterdeck issued an invoice for $151,121. The invoice specifically itemized the equipment and services provided to the Committee. On December 1, 1992, the Committee issued a check in the amount of $50,000 to Quarterdeck for miscellaneous computer software and hardware. Attached to the check was the November 17, 1992 invoice. The invoice was annotated as follows: "Bill adjusted to $50,000. Due Nov 30, 1992, Stanton Kaye." After the $50,000 check was issued on December, 1, 1992, Quarterdeck provided the Committee with an invoice, dated December 4, 1992, showing that the amount due was $50,000.

In its response to the Interim Audit Report, the Committee contended that this item was provided in the normal course of business and did not represent prohibited contributions. Nevertheless, Mr. Kaye's July 21, 1993 letter stated: "Since leasing computers is not our normal business, this was not billed in the 'normal course of business.' However, as soon as it was billed, it was paid."

Quarterdeck's leasing of the computers to the Committee resulted in a contribution. The original invoice stated that the Committee owed $151,121 for the equipment and services provided. The invoice specifically itemized the cost for the equipment and services. The Committee and Mr. Kaye apparently decided to discount the bill to $50,000. This discount on its face, without an explanation, is irregular. A discount below the "usual and normal charge" is a contribution if the discount is not routinely offered in the vendor's ordinary course of business to nonpolitical clients. 11 C.F.R. § 100.7(a)(1)(iii); see AO 1978-45. In the audit, the Committee and Quarterdeck failed to provide any information on the reasons for the discount. Therefore, there is reason to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution of $101,121 ($151,121 - $50,000) from Quarterdeck Office Systems as a result of the Committee's use of computer software and hardware at a discount below the usual and normal charge.

C. Labor Organization Expenditures and Use of Labor Organization Facilities

A "contribution or expenditure" includes "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value" to any candidate or campaign committee in connection with a federal election. 2 U.S.C. § 441b(b)(2); see also 11 C.F.R. § 114.1(a)(1). The Act provides that it is unlawful for any labor organization to make a contribution or expenditure in connection with any federal election. 2 U.S.C. § 441b(a). Furthermore, candidates and political committees may not knowingly accept or receive such prohibited contributions. Id. However, the Commission's regulations provide a "safe harbor" for political committees and labor organizations, if a person (other than an official, member and employee of the labor organization) uses labor organization facilities for activity in connection with a federal election. 11 C.F.R. § 114.9(d). The definition of "person" includes any committee. See 11 C.F.R. § 100.10. Nevertheless, the person is required to reimburse the labor organization within a commercially reasonable time in the amount of the normal and usual rental charge for the use of the facilities. Id.; 11 C.F.R. 100.7(a)(1)(iii)(B).

The Act requires political committees to report the amount and nature of outstanding debts and obligations owed by or to such political committees. 2 U.S.C. § 434(b)(8); see also 11 C.F.R. § 104.11. The Commission's regulations also provide that if the exact amount of a debt or obligation is not known, the report shall state that the amount reported is an estimate. 11

C.F.R. § 104.11(b). Once the exact amount is determined, the political committee shall either amend the report containing the estimate or indicate the correct amount on the report for the reporting period in which such amount is determined. Id.

The New York primary was held on April 7, 1992. To facilitate its participation in the primary, the Committee used the facilities of the Drug, Hospital & Health Care Employees Union, Local 1199 ("the Union") from March 30, 1992 to April 10, 1992. The Committee incurred expenses for food and refreshments, rent, printing, advertising, telephone, staff compensation, and other miscellaneous items.

According to a letter written by a Union official, dated October 12, 1992, Union and Committee officials had a conversation on October 9, 1992 concerning two amounts owed by the Committee. The Union submitted an invoice to the Committee, with a letter, dated October 28, 1992, requesting payment. This invoice detailed the expenses incurred by the Union for the Committee. It appears that the Committee a day earlier, on October 27, 1992, had issued a check in the amount of $57,196 to the Union. In a May 24, 1993 written statement to the auditors, the Committee stated that it had no written agreement for these expenditures, which were the result of a sudden need for meeting rooms and banquet facilities, and were incurred with respect to the New York primary. In the statement, the Committee stated: "Apparently the invoice of the charges 'fell through the cracks' and we were not billed. [The Committee contacted a union official] several times asking for the bill so that it could be

paid. As soon as [the Committee] received and reviewed the bill (and after a revised invoice was issued) it was paid."

In its response to the Interim Audit Report, the Committee submitted a July 16, 1993, letter from Dennis Rivera, the president of the Union. In the letter, Mr. Rivera stated that the reason for the Union's delay in submitting the bill was the result of several mislaid invoices in the accounting department. The letter also stated that no bills were submitted to the Committee until these invoices were recovered. Moreover, the Committee maintains that it requested several times that the Union send the bill to the Committee so that it could pay for the expenses.

The amount invoiced to the Committee included two types of expenses: (1) costs for the use of the Union's facilities; and (2) expenses that the Union incurred on behalf of the Committee. A total of $18,198.60 appears to be associated with the use of the Union's facilities. The Union billed the Committee: $11,650.00 for printing at its print shop, $5,925 for the rent for the Union's rooms and auditorium, and $623.60 for long distance telephone charges. The Union also made $39,497.37 in expenditures on behalf of the Committee:

WSKQ Radio Spots	$ 2,150.00
1199 Per Diem	$ 1,446.14
Ardeon Realty Staff O/T	$ 1,482.01
American Presort	$ 442.85
Hobb Electrical Supply	$ 230.49
Ryder Truck Rental	$ 703.63
Cash (Victory Party)	$ 2,488.10
Manhattan Ford NY	$ 254.81
Rental Truck Parking	$ 104.50
Food/Refreshments	$11,853.65
Toy Balloons	$ 860.59

Prompt Signs	$ 899.56
Milford Plaza Hotel	$ 500.00
Philmark Lithographics	$ 7,685.75
Adirondack Rents	$ 4,995.72
Ace Audio Visual Co.	$ 3,399.57

The Union's failure to bill the Committee for six months for the use of its facilities does not appear to be commercially reasonable. Therefore, there is reason to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution of $18,198.60 from the Union. The Union's provision of $39,497.37 in goods and services, which were not associated with the use of the Union's facilities, resulted in an in-kind contribution to the Committee. Therefore, there is reason to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution of $39,497.37 from the Union. In addition, there is reason to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11 by failing to report the debt owed to the Union during the time it was outstanding.

D. **Excessive Travel Reimbursements from the Media**

Pursuant to 11 C.F.R. § 9034.6, a publicly-funded presidential committee that provides travel-related services to the media may charge for the services and accept resulting reimbursements. However, the reimbursements may not exceed the pro rata portion of the actual cost (or a reasonable estimate of the pro rata share) plus 10%. If the committee receives more than 110% of the actual cost from the media, that excess amount must be returned to the media on a pro rata basis. Explanation

and Justification for 11 C.F.R. § 9034.6, 56 Fed. Reg. 35906 (July 29, 1991). The committee may then deduct from its expenditures subject to the overall expenditure limitation the amount of reimbursement received, not to exceed the actual cost plus 3% for administrative costs. 11 C.F.R. § 9034.6(d)(1). If a committee has incurred higher administrative costs in providing these services, it must document the total cost incurred for such services in order to deduct a higher amount of reimbursements received. 11 C.F.R. § 9034.6(d)(1). If the amount reimbursed exceeds the actual cost plus administrative costs, the difference must be paid to the United States Treasury. This regulation recognizes that reimbursements from the media may cover actual transportation costs and the costs of administering a transportation program, but should not result in a primary candidate's committee making a profit. See Explanation and Justification of 11 C.F.R. § 9034.6, 56 Fed. Reg. 35906 (July 29, 1991).

The audit found that the Committee paid $228,200 for transportation and services provided to the media. Under the regulations, the maximum amount that could have been billed to the media was $251,020 ($228,200 + 10%). See 11 C.F.R. § 9034.6(d)(1). The audit also found that the Committee received media reimbursements totaling $302,253 for transportation services. Therefore, the audit found that the Committee had overcharged the media $51,233 ($302,253 - $251,020) for travel-related services. The Commission made an initial determination that the Committee must make a pro rata

refund of $51,233 to the media. See 11 C.F.R. § 9038.2(c)(1).

The cost of transportation and services provided plus the administrative costs allowed under the regulations was $235,046 ($228,200 + 3%). Therefore, the audit found that the Committee received media reimbursements in excess of the amount actually paid by the Committee for the media's transportation services and the administrative costs, totaling $15,974 ($251,020 - $235,046). Therefore, the Commission made an initial determination that the Committee must pay that amount to the United States Treasury pursuant to 11 C.F.R. § 9034.6(d)(1). See 11 C.F.R. § 9038.2(c)(1).

In response to the Final Audit Report, the Committee submitted additional manifests related to transportation provided to the media. This information indicated that the committee actually paid $282,359 for transportation and services. Under the regulations, the maximum amount that could have been billed to the media was $310,595 ($282,359 + 10%). See 11 C.F.R. § 9034.6(b). The Committee had received media reimbursements totaling $302,253 for transportation services. Therefore, the media reimbursements were less than the amount that could have been billed. Id. In the Statement of Reasons Supporting the Final Repayment Determination, the Commission concluded that no refunds to the media were required.

However, the Committee's response to the Final Audit Report revealed that the Committee received reimbursements in excess of the 3% allowance for administrative costs. The actual cost of transportation and services provided plus the administrative

costs allowed under the regulation was $290,830 ($282,359 + 3%). 11 C.F.R. § 9034.6(d)(1). Media reimbursements from the media totaled $302,253. Thus, the Committee received media reimbursements of $11,423 ($302,253 - $290,830) in excess of the amount actually paid by the Committee for the media's transportation services and the administrative costs. Therefore, there is reason to believe that Brown for President and Blaine Quick, as treasurer, violated 11 C.F.R. § 9034.6 by accepting reimbursements in excess of the 3% allowance for administrative costs.

In the Statement of Reasons Supporting the Final Repayment Determination, the Commission concluded that the Committee must pay $11,423 to the United States Treasury, representing the reimbursements in excess of the 3% allowance for administrative costs. 11 C.F.R. § 9034.6(d)(1). The Committee paid this amount to the Commission on March 17, 1995.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1995

Dennis Rivera, President
Drug, Hospital & Health Care
Employees Union, Local 1199
310 W. 43rd St.
New York, NY 10036

RE: MUR 3991
Drug, Hospital & Health Care
Employees Union, Local 1199

Dear Mr. Rivera:

On August 16, 1995, the Federal Election Commission found that there is reason to believe that the Drug, Hospital & Health Care Employees Union, Local 1199 violated 2 U.S.C. §441b(a), 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.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the Drug, Hospital & Health Care Employees Union, Local 1199. 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 demonstrating that no further action should be taken against the Drug, Hospital & Health Care Employees Union, Local 1199, 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 toward 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 pre-probable 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 enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Abel Móntez, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Danny L. McDonald
Chairman

Enclosures
Factual and Legal Analysis
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Designation of Counsel Form
Conciliation Agreement

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Drug, Hospital & Health Care Employees Union, Local 1199 **MUR:** 3991

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). Brown for President ("the Committee") registered with the Federal Election Commission ("the Commission") on September 2, 1991, as the principal campaign committee of Governor Edmund Brown, Jr., a candidate for the 1992 Democratic presidential nomination. Pursuant to 26 U.S.C. § 9038(a), the Commission conducted an audit and examination of the Committee's receipts, disbursements and qualified campaign expenses.

A "contribution or expenditure" includes "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value" to any candidate or campaign committee in connection with a federal election. 2 U.S.C. § 441b(b)(2); see also 11 C.F.R. § 114.1(a)(1). The Act provides that it is unlawful for any labor organization to make a contribution or expenditure in connection with any federal election. 2 U.S.C. § 441b(a). Furthermore, candidates and political committees may not knowingly accept or receive such prohibited contributions. Id. However, the Commission's regulations provide a "safe harbor" for political committees and labor organizations, if a person (other than an official, member and employee of the labor organization) uses labor organization facilities for activity in connection with a Federal election. 11

C.F.R. § 114.9(d). The definition of "person" includes any committee. See 11 C.F.R. § 100.10. Nevertheless, the person is required to reimburse the labor organization within a commercially reasonable time in the amount of the normal and usual rental charge for the use of the facilities. Id.; 11 C.F.R. 100.7(a)(1)(iii)(B).

The New York primary was held on April 7, 1992. To facilitate its participation in the primary, the Committee used the facilities of the Drug, Hospital & Health Care Employees Union, Local 1199 ("the Union") from March 30, 1992 to April 10, 1992. The Committee incurred expenses for food and refreshments, rent, printing, advertising, telephone, staff compensation, and other miscellaneous items.

According to a letter written by an official of the Union, dated October 12, 1992, Union and Committee officials had a conversation on October 9, 1992 concerning two amounts owed by the Committee. The Union submitted an invoice to the Committee, with a letter, dated October 28, 1992, requesting payment. This invoice detailed the expenses incurred by the Union for the Committee. It appears that the Committee a day earlier, on October 27, 1992, had issued a check in the amount of $57,196, to the Union.

In a May 24, 1993 written statement to the auditors, the Committee stated that it had no written agreement for these expenditures, which were the result of a sudden need for meeting rooms and banquet facilities, and were incurred with respect to the New York primary. In the statement, the Committee stated:

"Apparently the invoice of the charges 'fell through the cracks' and we were not billed. [The Committee contacted an official of the Respondent] several times asking for the bill so that it could be paid. As soon as [the Committee] received and reviewed the bill (and after a revised invoice was issued) it was paid."

In its response to the Interim Audit Report, the Committee submitted a July 16, 1993, letter from Dennis Rivera, the president of the Union. In the letter, Mr. Rivera stated that the reason for the Union's delay in submitting the bill was the result of several mislaid invoices in the accounting department. The letter also stated that no bills were submitted to the Committee until these invoices were recovered. Moreover, the Committee maintains that it requested several times that the Union send the bill to the Committee so that it could pay for the expenses.

The amount invoiced to the Committee included two types of expenses: (1) costs for the use of the Union's facilities; and (2) expenses that the Union incurred on behalf of the Committee. A total of $18,198.60 appear to be associated with the use of the Union's facilities. The Union billed the Committee: $11,650.00 for printing at its print shop, $5,925 for the rent for the Union's rooms and auditorium, and $623.60 for long distance telephone charges. The Union also made $39,497.37 in expenditures on behalf of the Committee:

WSKQ Radio Spots	$ 2,150.00
1199 Per Diem	$ 1,446.14
Ardeon Realty Staff O/T	$ 1,482.01
American Presort	$ 442.85
Hobb Electrical Supply	$ 230.49
Ryder Truck Rental	$ 703.63
Cash (Victory Party)	$ 2,488.10
Manhattan Ford NY	$ 254.81
Rental Truck Parking	$ 104.50
Food/Refreshments	$11,853.65
Toy Balloons	$ 860.59
Prompt Signs	$ 899.56
Milford Plaza Hotel	$ 500.00
Philmark Lithographics	$ 7,685.75
Adirondack Rents	$ 4,995.72
Ace Audio Visual Co.	$ 3,399.57

The Union's failure to bill the Committee for six months for the use of its facilities does not appear to be commercially reasonable. Therefore, there is reason to believe that Drug, Hospital & Health Care Employees Union, Local 1199 violated 2 U.S.C. § 441b(a) by making a $18,198.60 in-kind contribution to Brown for President. The Union's provision of $39,497.37 in goods and services, which were not associated with the use of the Union's facilities, resulted in an in-kind contribution to the Committee. Therefore, there is reason to believe that Drug, Hospital & Health Care Employees Union, Local 1199 violated 2 U.S.C. § 441b(a) by making a $39,497.37 in-kind contribution to Brown for President.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1995

Gaston Bastiaens
President-Chief Executive Officer
Quarterdeck Office Systems, Inc.
1901 Main Street
Santa Monica, CA 90405

RE: MUR 3991
Quarterdeck Office Systems, Inc.

Dear Mr. Bastiaens:

On August 16, 1995, the Federal Election Commission found that there is reason to believe that Quarterdeck Office Systems, Inc. violated 2 U.S.C. § 441b(a), 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.

Under the Act, you have an opportunity to demonstrate that no action should be taken against Quarterdeck Office Systems, Inc. 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 demonstrating that no further action should be taken against Quarterdeck Office Systems, Inc., 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 toward 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 pre-probable 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 enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Abel Móntez, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Danny L. McDonald
Chairman

Enclosures
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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Quarterdeck Office Systems **MUR:** 3991

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). Brown for President ("the Committee") registered with the Federal Election Commission ("the Commission") on September 2, 1991, as the principal campaign committee of Governor Edmund Brown, Jr., a candidate for the 1992 Democratic presidential nomination. Pursuant to 26 U.S.C. § 9038(a), the Commission conducted an audit and examination of the Committee's receipts, disbursements and qualified campaign expenses.

It is unlawful for any corporation to make a contribution or expenditure in connection with any federal election to any political office. 2 U.S.C. § 441b(a). It is unlawful for any candidate or political committee to accept or receive any contribution from a corporation. Id. The provision of goods and services by a vendor for less than the usual and normal charge is a contribution. 11 C.F.R. § 100.7(a)(1)(iii). The usual and normal charge is the price of the goods in the market from which they normally would have been purchased at the time of the contribution. 11 C.F.R. § 100.7(a)(1)(iii)(B). The amount of the contribution is the difference between the usual and normal charge and the amount charged the Committee. 11 C.F.R. § 100.7(a)(1)(iii)(A).

Prior to the campaign, Quarterdeck Office Systems ("Quarterdeck"), an incorporated commercial vendor, located in Santa Monica, California, had computer software and hardware in storage. In a July 21, 1993 letter submitted in response to the Interim Audit Report, Quarterdeck's Vice President for Marketing & International Sales, Stanton Kaye, explained that he was a friend of the campaign manager, Jodie Evans. According to Mr. Kaye, Ms. Evans mentioned that the Committee would require computer equipment. According to Mr. Kaye, he told Ms. Evans that although Quarterdeck was not in the business of leasing computer equipment, Quarterdeck had computers in storage that were not being used.

According to Mr. Kaye, he turned the matter over to his staff. Mr. Kaye stated that his staff and the Committee verbally agreed that nothing would be done until it was decided whether the campaign was going to purchase or rent the computers from Quarterdeck. Mr. Kaye stated that the Committee and his company staff "had discussions for several months and it was finally decided that the campaign would lease the computers for the amount that was comparable to the loss of value and pay for [Quarterdeck's] service time."

Quarterdeck provided the computers to the Committee. However, because of the informal nature of the arrangement between Quarterdeck and the Committee, it is unclear when the Committee actually acquired the computers. Nevertheless, on November 17, 1992, Quarterdeck issued an invoice for $151,121. The invoice specifically itemized the equipment and services

provided to the Committee. On December 1, 1992, the Committee issued a check in the amount of $50,000 to Quarterdeck for miscellaneous computer software and hardware. Attached to the check was the November 17, 1992 invoice. The invoice was annotated as follows: "Bill adjusted to $50,000. Due Nov 30, 1992, Stanton Kaye." After the $50,000 check was issued on December, 1, 1992, Quarterdeck provided the Committee with an invoice, dated December 4, 1992, showing that the amount due was $50,000.

In its response to the Interim Audit Report, the Committee contended that this item was in the normal course of business and did not represent prohibited contributions. Nevertheless, Mr. Kaye's July 21, 1993 letter stated: "Since leasing computers is not our normal business, this was not billed in the 'normal course of business.' However, as soon as it was billed, it was paid."

Quarterdeck's leasing of the computers to the Committee resulted in a contribution. The original invoice stated that the Committee owed $151,121 for the equipment and services provided. The invoice specifically itemized the cost for the equipment and services. The Committee and Mr. Kaye apparently decided to discount the bill to $50,000. This discount on its face, without an explanation, is irregular. A discount below the "usual and normal charge" is a contribution if the discount is not routinely offered in the vendor's ordinary course of business to nonpolitical clients. 11 C.F.R. § 100.7(a)(1)(iii); see AO 1978-45 (a discount in the price for billboard advertising is an illegal corporate contribution). In the audit, the Committee and

Quarterdeck failed to provide any information on the reasons for the discount. Therefore, there is reason to believe that Quarterdeck Office Systems violated 2 U.S.C. § 441b(a) by making an in-kind contribution of $101,121 ($151,121 - $50,000) as a result of the Committee's use of computer software and hardware at a discount below the usual and normal charge.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1995

Linda Bourbeau
145 Otis St.
Hingham, MA 02043

RE: MUR 3991
Linda Bourbeau

Dear Ms. Bourbeau:

On August 16, 1995, the Federal Election Commission found reason to believe that you, as an individual, violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended by making an excessive contribution to Brown for President ("the Committee). 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 Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Please be advised that your total amount of contributions violated the contribution limitation at 2 U.S.C. § 441a(a)(1)(A). The Commission reminds you that "advances" 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 a political committee are considered contributions. See 11 C.F.R. § 116.5(b). You should take steps to ensure that you abide by the contribution limitation and this regulation in the future.

The file will be made public within 30 days after this matter has been closed with respect to all other respondents. 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 Abel Móntez, the attorney assigned to this matter, at (202) 219-3690 or (800) 424-9530.

Sincerely,

Danny L. McDonald
Chairman

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Linda Bourbeau **MUR:** 3991

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). Brown for President ("the Committee") registered with the Federal Election Commission ("the Commission") on September 2, 1991, as the principal campaign committee of Governor Edmund Brown, Jr., a candidate for the 1992 Democratic presidential nomination. Pursuant to 26 U.S.C. § 9038(a), the Commission conducted an audit and examination of the Committee's receipts, disbursements and qualified campaign expenses.

Under the Federal Election Campaign Act of 1971, as amended ("the Act"), no person may make contributions to any candidate and his or her authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A). No candidate or political committee shall knowingly accept any contribution that exceeds the contribution limitations. 2 U.S.C. § 441a(f). Moreover, no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures. Id.

The payment by an individual from his or her personal funds for the costs incurred in providing goods or services to, or

obtaining goods or services that are used by or on behalf of a political committee is a contribution. 11 C.F.R. § 116.5(b). However, two exemptions exist. First, an individual may spend an aggregate of $1,000 per election for personal transportation expenses on behalf of a candidate without counting such expenditures as contributions. 11 C.F.R. §§ 100.7(b)(8) and 116.5(b). Second, advances of personal funds will not be considered contributions if they are for the individual's personal transportation expenses or 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. 11 C.F.R. § 116.5(b); see also Explanation and Justification for 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26383 (June 27, 1989). If the individual's transportation and subsistence expenses are paid by personal credit card, they must be reimbursed within 60 days after the closing date of the billing statement on which the charge first appears, or if a personal credit card was not used, within 30 days after the date on which the expenses were incurred. Id. When an individual incurs expenses for the subsistence of others, a contribution occurs at the time the financial obligation is incurred, regardless of when the payment is due or when the individual pays the debt. 11 C.F.R. § 116.5; see also Explanation and Justification for 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26382 (June 27, 1989).

The Commission intended section 116.5 to provide for a limited exception to the general rules governing contributions for

an individual's personal transportation expenses, and for the usual and normal subsistence expenses of an individual who is not a volunteer. 11 C.F.R. § 116.5, 55 Fed. Reg. 26382-3 (June 27, 1989). The Commission also adopted the section 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 (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.).

The Commission's audit revealed evidence that campaign staff member Linda Bourbeau made excessive contributions to the Committee. From January 1992 to May 1992, Linda Bourbeau made various advances for telephone calls, parking, automobile rentals, automobile rental accident, office supplies, printing, postage, and overnight mailings. Her advances ranged from $14.50 to $4,075.25. These advances are contributions to the Committee under 11 C.F.R. § 116.5(b). On May 4, 1992, Ms. Bourbeau's excessive amount reached its highest at $10,372.56.

A contribution to the Committee resulted at the time Ms. Bourbeau incurred the financial obligation for the non-travel items and the travel and subsistence of others. See 11 C.F.R. § 116.5(b). Ms. Bourbeau's expenditures of $10,372.56 on behalf

of the Committee for non-travel items and travel and subsistence of others constitute contributions to the Committee under 11 C.F.R. § 116.5(b).

As stated above, under the Act no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A). Thus, the staff advances by Linda Bourbeau appear to have exceeded the individual contribution limit of section 441a(a)(1)(A). Therefore, there is reason to believe that Linda Bourbeau violated 2 U.S.C. § 441a(a)(1)(A).

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1995

Joseph Sohm, President
Chromosohm Media Inc.
423 E. Ojai
Ojai, CA 93023

RE: MUR 3991
Chromosohm Media Inc.

Dear Mr. Sohm:

On August 16, 1995, the Federal Election Commission found that there is reason to believe that Chromosohm Media Inc. violated 2 U.S.C. § 441b(a), 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.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the Chromosohm Media Inc. 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 demonstrating that no further action should be taken against the Chromosohm Media Inc., 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 toward 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 pre-probable 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 enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Abel Móntez, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Danny L. McDonald

Danny L. McDonald
Chairman

Enclosures
Factual and Legal Analysis
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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Chromosohm Media Inc. **MUR:** 3991

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). Brown for President ("the Committee") registered with the Federal Election Commission ("the Commission") on September 2, 1991, as the principal campaign committee of Governor Edmund Brown, Jr., a candidate for the 1992 Democratic presidential nomination. Pursuant to 26 U.S.C. § 9038(a), the Commission conducted an audit and examination of the Committee's receipts, disbursements and qualified campaign expenses.

It is unlawful for any corporation to make a contribution or expenditure in connection with any federal election to any political office. 2 U.S.C. § 441b(a). It is unlawful for any candidate or political committee to accept or receive any contribution from a corporation. Id. The provision of goods and services by a vendor for less than the usual and normal charge is a contribution. 11 C.F.R. § 100.7(a)(1)(iii). The usual and normal charge is the price of the goods in the market from which they normally would have been purchased at the time of the contribution. 11 C.F.R. § 100.7(a)(1)(iii)(B). The amount of the contribution is the difference between the usual and normal charge and the amount charged the Committee. 11 C.F.R. § 100.7(a)(1)(iii)(A).

Chromosohm Media Inc. ("Chromosohm"), an incorporated commercial vendor, is a special events company located in Ojai, California. During the campaign, the company was located in Los Angeles, California. On February 6, 1992, Chromosohm produced a campaign event for the Committee. On February 10, 1992, in a letter on Chromosohm stationery, Joseph Sohm, Chromosohm president, billed the Committee $4,168.75 for the event for such items as production, audio visual expenses, audio recording session, equipment rental, equipment purchases, office expenses, and mailing expenses. The letter stated: "The estimated retail value of your event if I billed retail would be around $75,000. The video production was worth an additional $75,000, therefore the total value of the event was around $150,000. If we stay under $25,000 I think we will have done spectacularly." On February 10, 1992, the Committee issued a check for $4,168.75 to Joseph Sohm.

Chromosohm's provision of media event services to the Committee resulted in a contribution. The letter acknowledges that the "retail value" of these services was "around $150,000." The invoice specifically itemized the cost for the equipment and services. The Committee and Chromosohm apparently decided to discount the bill to $4,168.75. This discount on its face, without an explanation, is irregular. A discount below the "usual and normal charge" is a contribution if the discount is not routinely offered in the vendor's ordinary course of business to nonpolitical clients. 11 C.F.R. § 100.7(a)(1)(iii); see AO 1978-45 (a discount in the price for billboard

advertising is an illegal corporate contribution). In the audit, the Committee did not provide any information on its transactions with either Joseph Sohm or Chromosohm. Therefore, there is reason to believe that Chromosohm Media Inc. violated 2 U.S.C. § 441b(a) by making an in-kind contribution of $145,831.25 ($150,000 - $4,168.75) as a result of Chromosohm's provision of media services at a discount below the usual and normal charge.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1995

Jodie Evans
643 E. Channel Road
Santa Monica, CA 90402

RE: MUR 3991
Jodie Evans

Dear Ms. Evans:

On August 16, 1995, the Federal Election Commission found reason to believe that you, as an individual, violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended by making an excessive contribution to Brown for President ("the Committee). 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 Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Please be advised that your total amount of contributions violated the contribution limitation at 2 U.S.C. § 441a(a)(1)(A). The Commission reminds you that "advances" 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 a political committee are considered contributions. See 11 C.F.R. § 116.5(b). You should take steps to ensure that you abide by the contribution limitation and this regulation in the future.

The file will be made public within 30 days after this matter has been closed with respect to all other respondents. 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 Abel Móntez, the attorney assigned to this matter, at (202) 219-3690 or (800) 424-9530.

Sincerely,

Danny L. McDonald
Chairman

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Jodie Evans **MUR:** 3991

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). Brown for President ("the Committee") registered with the Federal Election Commission ("the Commission") on September 2, 1991, as the principal campaign committee of Governor Edmund Brown, Jr., a candidate for the 1992 Democratic presidential nomination. Pursuant to 26 U.S.C. § 9038(a), the Commission conducted an audit and examination of the Committee's receipts, disbursements and qualified campaign expenses.

Under the Federal Election Campaign Act of 1971, as amended ("the Act"), no person may make contributions to any candidate and his or her authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A). No candidate or political committee shall knowingly accept any contribution that exceeds the contribution limitations. 2 U.S.C. § 441a(f). Moreover, no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures. Id.

The payment by an individual from his or her personal funds for the costs incurred in providing goods or services to, or

obtaining goods or services that are used by or on behalf of a political committee is a contribution. 11 C.F.R. § 116.5(b). However, two exemptions exist. First, an individual may spend an aggregate of $1,000 per election for personal transportation expenses on behalf of a candidate without counting such expenditures as contributions. 11 C.F.R. §§ 100.7(b)(8) and 116.5(b). Second, advances of personal funds will not be considered contributions if they are for the individual's personal transportation expenses or 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. 11 C.F.R. § 116.5(b); see also Explanation and Justification for 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26383 (June 27, 1989). If the individual's transportation and subsistence expenses are paid by personal credit card, they must be reimbursed within 60 days after the closing date of the billing statement on which the charge first appears, or if a personal credit card was not used, within 30 days after the date on which the expenses were incurred. Id. When an individual incurs expenses for the subsistence of others, a contribution occurs at the time the financial obligation is incurred, regardless of when the payment is due or when the individual pays the debt. 11 C.F.R. § 116.5. See also Explanation and Justification for 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26382 (June 27, 1989).

The Commission intended section 116.5 to provide for a limited exception to the general rules governing contributions for

an individual's personal transportation expenses, and for the usual and normal subsistence expenses of an individual who is not a volunteer. 11 C.F.R. § 116.5, 55 Fed. Reg. 26382-3 (June 27, 1989). The Commission also adopted the section 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 (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.).

The Commission's audit revealed evidence that campaign manager Jodie Evans made excessive contributions to the Committee. From September 2, 1991 to March 5, 1992, Ms. Evans was the Committee's treasurer; some of Ms. Evans' advance activity occurred during this time. Ms. Evans utilized seven different personal credit cards from September 1991 to December 1992 for campaign related expenses. The majority of expenses charged to these accounts were for various campaign expenses, such as candidate's and others' campaign travel and subsistence, phone calls, facsimile charges, rentals, food for receptions, photocopies, postage, and supplies. Her advances ranged from $4.75 to $5,008.20. These advances are contributions to the

Committee under 11 C.F.R. § 116.5. On May 1, 1992, Ms. Evans' excessive amount reached its highest at $41,868.98.

A contribution to the Committee resulted at the time Ms. Evans incurred the financial obligation for the non-travel items and the travel and subsistence of others. See 11 C.F.R. § 116.5(b). Ms. Evans' expenditures of $41,868.98 on behalf of the Committee for non-travel items and travel and subsistence of others constitute contributions to the Committee under 11 C.F.R. § 116.5(b).

As stated above, under the Act no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A). Thus, the staff advances by Jodie Evans appear to have exceeded the individual contribution limit of section 441a(a)(1)(A). Therefore, there is reason to believe that Jodie Evans violated 2 U.S.C. § 441a(a)(1)(A).

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1995

Michael C. Bourbeau
145 Otis St.
Hingham, MA 02043

RE: MUR 3991
Michael C. Bourbeau

Dear Mr. Bourbeau:

On August 16, 1995, the Federal Election Commission found reason to believe that you, as an individual, violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended by making an excessive contribution to Brown for President ("the Committee). 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 Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Please be advised that your total amount of contributions violated the contribution limitation at 2 U.S.C. § 441a(a)(1)(A). The Commission reminds you that "advances" 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 a political committee are considered contributions. See 11 C.F.R. § 116.5(b). You should take steps to ensure that you abide by the contribution limitation and this regulation in the future.

The file will be made public within 30 days after this matter has been closed with respect to all other respondents. 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 Abel Móntez, the attorney assigned to this matter, at (202) 219-3690 or (800) 424-9530.

Sincerely,

Danny L. McDonald
Chairman

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Michael C. Bourbeau **MUR:** 3991

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). Brown for President ("the Committee") registered with the Federal Election Commission ("the Commission") on September 2, 1991, as the principal campaign committee of Governor Edmund Brown, Jr., a candidate for the 1992 Democratic presidential nomination. Pursuant to 26 U.S.C. § 9038(a), the Commission conducted an audit and examination of the Committee's receipts, disbursements and qualified campaign expenses.

Under the Federal Election Campaign Act of 1971, as amended ("the Act"), no person may make contributions to any candidate and his or her authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A). No candidate or political committee shall knowingly accept any contribution that exceeds the contribution limitations. 2 U.S.C. § 441a(f). Moreover, no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures. Id.

The payment by an individual from his or her personal funds for the costs incurred in providing goods or services to, or

obtaining goods or services that are used by or on behalf of a political committee is a contribution. 11 C.F.R. § 116.5(b). However, two exemptions exist. First, an individual may spend an aggregate of $1,000 per election for personal transportation expenses on behalf of a candidate without counting such expenditures as contributions. 11 C.F.R. §§ 100.7(b)(8) and 116.5(b). Second, advances of personal funds will not be considered contributions if they are for the individual's personal transportation expenses or 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. 11 C.F.R. § 116.5(b); see also Explanation and Justification for 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26383 (June 27, 1989). If the individual's transportation and subsistence expenses are paid by personal credit card, they must be reimbursed within 60 days after the closing date of the billing statement on which the charge first appears, or if a personal credit card was not used, within 30 days after the date on which the expenses were incurred. Id. When an individual incurs expenses for the subsistence of others, a contribution occurs at the time the financial obligation is incurred, regardless of when the payment is due or when the individual pays the debt. 11 C.F.R. § 116.5. See also Explanation and Justification for 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26382 (June 27, 1989).

The Commission intended section 116.5 to provide for a limited exception to the general rules governing contributions for

an individual's personal transportation expenses, and for the usual and normal subsistence expenses of an individual who is not a volunteer. 11 C.F.R. § 116.5, 55 Fed. Reg. 26382-3 (June 27, 1989). The Commission also adopted the section 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 (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.).

The Commission's audit revealed evidence that campaign staff member Michael C. Bourbeau made excessive contributions to the Committee. From November 1991 to June 1992, Mr. Bourbeau made various advances for office expenses, telephone calls, gas, tolls, postage, reception expenses, food satellite fees, rental cars, and printing. His advances ranged from $3.58 to $2,815.06. These advances are contributions to the Committee under 11 C.F.R. § 116.5(b). On March 21, 1992, Mr. Bourbeau's excessive amount reached its highest at $13,172.13.

A contribution to the Committee resulted at the time Mr. Bourbeau incurred the financial obligation for the non-travel items and the travel and subsistence of others. See 11 C.F.R. § 116.5(b). Mr. Bourbeau's expenditures of $13,172.13 on behalf

of the Committee for non-travel items and travel and subsistence of others constitute contributions to the Committee under 11 C.F.R. § 116.5(b).

As stated above, under the Act no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A). Thus, the staff advances by Michael C. Bourbeau appear to have exceeded the individual contribution limit of section 441a(a)(1)(A). Therefore, there is reason to believe that Michael C. Bourbeau violated 2 U.S.C. § 441a(a)(1)(A).

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1995

Robert Klahn
355 N. Cantana #396
Camarillo, CA 93010

RE: MUR 3991
Robert Klahn

Dear Mr. Klahn:

On August 16, 1995, the Federal Election Commission found reason to believe that you, as an individual, violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended by making an excessive contribution to Brown for President ("the Committee). 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 Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Please be advised that your total amount of contributions violated the contribution limitation at 2 U.S.C. § 441a(a)(1)(A). The Commission reminds you that "advances" 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 a political committee are considered contributions. See 11 C.F.R. § 116.5(b). You should take steps to ensure that you abide by the contribution limitation and this regulation in the future.

The file will be made public within 30 days after this matter has been closed with respect to all other respondents. 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 Abel Móntez, the attorney assigned to this matter, at (202) 219-3690 or (800) 424-9530.

Sincerely,

Danny L. McDonald
Chairman

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Robert Klahn MUR: 3991

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). Brown for President ("the Committee") registered with the Federal Election Commission ("the Commission") on September 2, 1991, as the principal campaign committee of Governor Edmund Brown, Jr., a candidate for the 1992 Democratic presidential nomination. Pursuant to 26 U.S.C. § 9038(a), the Commission conducted an audit and examination of the Committee's receipts, disbursements and qualified campaign expenses.

Under the Federal Election Campaign Act of 1971, as amended ("the Act"), no person may make contributions to any candidate and his or her authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A). No candidate or political committee shall knowingly accept any contribution that exceeds the contribution limitations. 2 U.S.C. § 441a(f). Moreover, no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures. Id.

The payment by an individual from his or her personal funds for the costs incurred in providing goods or services to, or

obtaining goods or services that are used by or on behalf of a political committee is a contribution. 11 C.F.R. § 116.5(b). However, two exemptions exist. First, an individual may spend an aggregate of $1,000 per election for personal transportation expenses on behalf of a candidate without counting such expenditures as contributions. 11 C.F.R. §§ 100.7(b)(8) and 116.5(b). Second, advances of personal funds will not be considered contributions if they are for the individual's personal transportation expenses or 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. 11 C.F.R. § 116.5(b); see also Explanation and Justification for 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26383 (June 27, 1989). If the individual's transportation and subsistence expenses are paid by personal credit card, they must be reimbursed within 60 days after the closing date of the billing statement on which the charge first appears, or if a personal credit card was not used, within 30 days after the date on which the expenses were incurred. Id. When an individual incurs expenses for the subsistence of others, a contribution occurs at the time the financial obligation is incurred, regardless of when the payment is due or when the individual pays the debt. 11 C.F.R. § 116.5. See also Explanation and Justification, of 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26382 (June 27, 1989).

The Commission intended section 116.5 to provide for a limited exception to the general rules governing contributions for

an individual's personal transportation expenses, and for the usual and normal subsistence expenses of an individual who is not a volunteer. 11 C.F.R. § 116.5, 55 Fed. Reg. 26382-3 (June 27, 1989). The Commission also adopted the section 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 (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.).

The Commission's audit revealed evidence that staff member Robert Klahn made excessive contributions to the Committee. From April 1992 to August 1992, Mr. Klahn made various advances for campaign expenses such as overnight letter mailings, courier services, travel and subsistence of others, and telephone calls that resulted in contributions to the Committee. 11 C.F.R. § 116.5(b). Using his own personal credit card, Mr. Klahn also advanced money for his own travel and subsistence that was not reimbursed within 30 or 60 days. 11 C.F.R. § 116.5(b). His advances ranged from $9 to $1,510. On May 24, 1992, Mr. Klahn's excessive amount reached its highest at $4,605.69.

A contribution to the Committee resulted at the time Mr. Klahn incurred the financial obligation for the non-travel items

and the travel and subsistence of others. See 11 C.F.R. § 116.5(b). Mr. Klahn's expenditures of $4,605.69 on behalf of the Committee for non-travel items and travel and subsistence of others constitute contributions to the Committee under 11 C.F.R. § 116.5(b).

As stated above, under the Act no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A). Thus, the staff advances by Mr. Klahn appear to have exceeded the individual contribution limit of section 441a(a)(1)(A). Therefore, there is reason to believe that Robert Klahn violated 2 U.S.C. § 441a(a)(1)(A).

LAW OFFICES OF
OXMAN & JAROSCAK
14126 EAST ROSECRANS BOULEVARD
SANTA FE SPRINGS, CALIFORNIA 90670

TEL: (310) 921-5058
FAX: (310) 921-2298

TO:	Mr. Danny L. McDonald	FAX NO.	(202) 219-3923
DATE:	September 7, 1995	TIME:	4:00 p.m. PDST
RE:	MUR 3991 Brown for President	PAGES:	2

Dear Mr. McDonald:

We are in teceipt of your letter of August 28, 1995, to Blaine Quick and the Brown for President Committee. Accompanying this telefax is a Statement of Designation of Counsel in this action. We will be representing the Brown for President Committee and Mr. Quick in this matter.

We would appreciate an extension of time in which to respond to your letter in order to engage in concilation. We are in need of additional time in order to obtain statements from the persons who are knowledgeable about the matters adressed by your letter and to gather appropriate documents. We could also appreciate being able to discuss the details of this matter with you along with obtaining the information and records you have concerning this action.

We shall contact you promptly to discuss this matter.

Very truly yours,

R. Brian Oxman

RBO:ma
Enclosure

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3991

NAME OF COUNSEL: R. Brian Oxman and Maureen Jaroscak

ADDRESS: 14126 East Rosecrans Blvd.
Santa Fe Springs, CA 90670

TELEPHONE: (310) 921-5058 Telephone
(310) 921-2298 Fax

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

September 1, 1995
Date

Signature

RESPONDENT'S NAME: Blaine Quick

ADDRESS: P.O. Box 8056
Rancho Santa FE, CA 92067

HOME PHONE: (619) 756-1101

BUSINESS PHONE: (619) 756-9900

97043821429

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 13, 1995

VIA FACSIMILE & FIRST CLASS MAIL
R. Brian Oxman
Oxman & Jaroscak
14126 East Rosecrans Boulevard
Santa Fe Springs, CA 90670

RE: MUR 3991
Brown for President and
Blaine Quick, as
treasurer

Dear Mr. Oxman:

This is in response to your letter dated and received September 7, 1995, requesting an extension to respond to the violation stated in the Factual and Legal Analysis for Brown for President and Blaine Quick, as treasurer. After considering the circumstances presented in your letter, the Office of General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on October 5, 1995.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Abel Móntez
Attorney

MANATT
PHELPS
PHILLIPS

A Law Partnership Including
Professional Corporations

Ronald B. Turovsky
Direct Dial: (310) 312-4249
Internet: rturovsky@manatt.com

September 7, 1995

By Facsimile and First Class Mail

Abel Montez, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3991 -- Quarterdeck Office Systems, Inc.
Statement of Designation of Counsel

Dear Mr. Montez:

I have enclosed the Statement of Designation of Counsel for Quarterdeck Office Systems, Inc.

Please do not hesitate to give me a call at (310) 312-4249 should you have any questions regarding this matter. Thank you for your cooperation.

Very truly yours,

Ronald B. Turovsky

Ronald B. Turovsky
Manatt, Phelps & Phillips

RBT:psl
Enclosure

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3991

NAME OF COUNSEL: RONALD B. TUROVSKY

ADDRESS: MANATT, PHELPS & PHILLIPS
11355 W. Olympic Boulevard
Los Angeles, California 90064

TELEPHONE: (310) 312-4249

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

September 7, 1995
Date

Signature
STEVEN TROPP

RESPONDENT'S NAME: QUARTERDECK OFFICE SYSTEMS, INC.

ADDRESS: 150 Pico Boulevard
Santa Monica, California 90405

HOME PHONE:

BUSINESS PHONE: (310) 392-9851

MANATT
PHELPS
PHILLIPS

A Law Partnership Including
Professional Corporations

Ronald B. Turovsky
Direct Dial: (310) 312-4249
Internet: rturovsky@manatt.com

September 11, 1995

By Facsimile and First Class Mail

Abel Montez, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3991 -- Quarterdeck Office Systems, Inc.

Dear Mr. Montez:

This is to request formally a 20-day extension of time in which to provide the Federal Election Commission (the "Commission") a response on behalf of Quarterdeck Office Systems, Inc. ("Quarterdeck") to the Commission's notice dated August 28, 1995, that the Commission has found that there is reason to believe that Quarterdeck has violated a provision of the Federal Election Campaign Act of 1971, as amended. We request that the conciliation negotiation period also be extended to reflect this additional time.

As I explained to you in our telephone conversation on September 11, this request is necessitated by several things. I have contacted Jodie Evans of the Brown for President Committee, who has informed me that she will be out of town for a substantial period of time and that documents are in storage and unavailable until her return. She also indicated she largely will be unavailable to discuss the matter until her return. In addition, one of the principals in the transaction, Stanton Kaye, is no longer with Quarterdeck, which has and will make it difficult to obtain documents and otherwise discuss this matter such that we can respond by September 21, 1995. While I did not mention this in our telephone conversation, there are others who were also involved in the matter who are no longer with Quarterdeck. There has been an almost 100% turnover at Quarterdeck since the transaction occurred. In short, while we will respond as soon as possible, it does not appear that it will be possible to respond fully and fairly by September 21. We thus request a 20-day extension until October 11, 1995.

Please let me know the disposition of this request as soon as possible by facsimile or telephone.

Thank you for your cooperation in this matter, and feel free to contact me with any questions or comments.

Very truly yours,

Ronald B. Turovsky

Ronald B. Turovsky

RBT:pesl

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 13, 1995

VIA FACSIMILE & FIRST CLASS MAIL
Ronald B. Turovsky, Esq.
Manatt, Phelps & Phillips
11355 West Olympic Blvd.
Los Angeles, CA 90064-1613

RE: MUR 3991
Quarterdeck Office
Systems, Inc.

Dear Mr. Turovsky:

This is in response to your letter dated and received September 11, 1995, requesting an extension of 20 days to respond to the violation stated in the Factual and Legal Analysis for Quarterdeck Office Systems, Inc. After considering the circumstances presented in your letter, the Office of General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on October 11, 1995. Pursuant to your verbal request, we have also enclosed copies of the invoices and documents that were referenced in the Factual and Legal Analysis for your client.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Abel Móntez
Attorney

Enclosures

LAW OFFICES OF
OXMAN & JAROSCAK
14126 EAST ROSECRANS BOULEVARD
SANTA FE SPRINGS, CALIFORNIA 90670

TEL: (310) 921-5058
FAX: (310) 921-2299

TO:	Mr. Danny L. McDonald	FAX NO.	(202) 219-3923
DATE:	September 25, 1995	TIME:	12:00 p.m. PDST
RE:	MUR 3991 Jon Sohm Brown for President	PAGES:	2

Dear Mr. McDonald:

We are in teceipt of your letter of August 28, 1995, to Joe Sohm and Chromoshom Media Inc. Accompanying this telefax is a Statement of Designation of Counsel in this action. We will be representing Mr. Sohmthe Brown for President Committee and Mr. Quick in this matter.

We would appreciate an extension of time in which to respond to your letter in order to engage in concilation. We are in need of additional time in order to obtain statements from the persons who are knowledgeable about the matters adressed by your letter and to gather appropriate documents. We would also appreciate being able to discuss the details of this matter with you along with obtaining the information and records you have concerning this action.

We shall contact you promptly to discuss this matter.

Very truly yours,

R. Brian Oxman

RBO:ma
Enclosure

STATEMENT OF DESIGNATION OF COUNSEL

3991

NAME OF COMMITTEE: R. Brian Oman and Maureen Jaroscak

ADDRESS: 14126 East Rosecrans Blvd.
Santa Fe Springs, CA 90670

TELEPHONE: (310) 921-5058 Telephone
(310) 921-2298 Fax

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

September 19, 1995
Date

Joe Sohm
Signature

RESPONDENT'S NAME: Joe Sohm

ADDRESS: 423 East Ojai Avenue
Ojai, California 93023

HOME PHONE: (805) 646-1795

BUSINESS PHONE: (805) 646-1794

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 28, 1995

VIA FACSIMILE & FIRST CLASS MAIL
R. Brian Oxman
Oxman & Jaroscak
14126 East Rosecrans Boulevard
Santa Fe Springs, CA 90670

RE: MUR 3991
Chromosohm Media Inc.

Dear Mr. Oxman:

This is in response to your letter dated and received September 25, 1995, requesting an extension to respond to the violation stated in the Factual and Legal Analysis for Chromosohm Media Inc. Your request for an extension was not received within five days prior to the due date of the response, September 15, 1995. However, after considering the circumstances presented in your letter, the Office of General Counsel has granted an extension. Accordingly, your response is due by the close of business on October 5, 1995.

If you have any questions, please contact me or Lorenzo Holloway at (202) 219-3690.

Sincerely,

Abel Móntez

Abel Móntez
Attorney

LAW OFFICES OF
OXMAN & JAROSCAK
14126 EAST ROSECRANS BOULEVARD
SANTA FE SPRINGS, CALIFORNIA 90670
TEL: (310) 921-9068
FAX: (310) 921-2299

TO: Mr. Danny L. McDonald FAX NO. (202) 219-3923

DATE: October 4, 1995 TIME: 5:30 p.m. PDST

RE: MUR 3991
Brown for President PAGES:

Dear Mr. McDonald:

Our response for the Brown for President Committe and Chromosohm Media, Inc., is due with the Commission on October 5, 1995. However, we have not received a copy of the Audit from the Commission. More important, this is a very detailed and involved matter and we have not been able to either receive documents from our clients or contact the numerous people who were involved in these transactions.

The Brown for President Committee has substantial explanations for the matters involved in this proceeding. We have set out to obtain written declarations from numerous individuals and to have them locate documents which are now more than three (3) years old and in storage. We have been unable to complete the preparation of our response or obtain any of the documents necessary to explain the nature of the transactions.

We request an additional extension of thirty (30) days to respond to the Commission. This request is made because of the reasons stated and because the matters involved in this proceeding are obscured by lost memories over three (3) years old. We would appreciate the additional time in order to make a thoughtful and appropriate response to the Commission.

Very truly yours,

R. Brian Oxman

RBO:ma

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 24, 1995

VIA FACSIMILE
R. Brian Oxman
Oxman & Jaroscak
14126 East Rosecrans Boulevard
Santa Fe Springs, CA 90670

RE: MUR 3991
Brown for President and Blaine Quick
as treasurer

Dear Mr. Oxman:

This is in response to your letter dated and received October 5, 1995, requesting a second extension to respond to the violation stated in the Factual and Legal Analysis for Brown for President and Blaine Quick, as treasurer. This is also a follow-up of our telephone conversation of October 12, 1995. During that conversation, I informed you that we would consider granting you a second extension, if you could, as a show of your efforts, provide us with any information or documents prior to the second deadline. After considering the circumstances presented in your letter and in your telephone conversation, the Office of General Counsel has granted you a 25-day extension. Accordingly, your response is due by the close of business on October 30, 1995.

If you have any questions, please contact me or Lorenzo Holloway at (202) 219-3690.

Sincerely,

Abel P. Móntez

Abel P. Móntez
Attorney

9704382140

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 24, 1995

VIA FACSIMILE
R. Brian Oxman
Oxman & Jaroscak
14126 East Rosecrans Boulevard
Santa Fe Springs, CA 90670

RE: MUR 3991
Chromosohm Media, Inc.

Dear Mr. Oxman:

This is in response to your letter dated and received October 5, 1995, requesting a second extension to respond to the violation stated in the Factual and Legal Analysis for Chromosohm Media, Inc. This is also a follow-up of our telephone conversation of October 12, 1995. During that conversation, I informed you that we would consider granting you a second extension, if you could, as a show of your efforts, provide us with any information or documents prior to the second deadline. After considering the circumstances presented in your letter and in your telephone conversation, the Office of General Counsel has granted you a 25-day extension. Accordingly, your response is due by the close of business on October 30, 1995.

If you have any questions, please contact me or Lorenzo Holloway at (202) 219-3690.

Sincerely,

Abel P. Montez

Abel P. Móntez
Attorney

MANATT
PHELPS
PHILLIPS

A Law Partnership Including
Professional Corporations

Ronald B. Turovsky
Direct Dial: (310) 312-4249
Internet: rturovsky@manatt.com

October 10, 1995

By Facsimile and First Class Mail

Abel Montez, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3991 -- Quarterdeck Office Systems, Inc.

Dear Mr. Montez:

This is to request formally a 7-day extension of time in which to provide the Federal Election Commission (the "Commission") a response on behalf of Quarterdeck Office Systems, Inc. ("Quarterdeck") to the Commission's notice dated August 28, 1995, that the Commission has found that there is reason to believe that Quarterdeck has violated a provision of the Federal Election Campaign Act of 1971, as amended. We request that the conciliation negotiation period also be extended to reflect this additional time.

As you may recall, we had requested and received an extension of time to respond until October 11. At that time, it appeared that this would provide us sufficient time to interview the individuals involved and review the necessary documents. As I explained, the difficulty that we were faced with boiled down to the fact that various of the individuals involved in the matter are no longer with Quarterdeck and others were unavailable due to other business. I pointed out that there has been substantial turnover at Quarterdeck since the events in question. As it has turned out, we have not yet been able to complete all of the declarations that we intend to submit in response to the Commission's notice. We believe that a one-week extension will enable us to finalize all of these documents and will best provide us an opportunity to present the Commission with all of the information so that the Commission can fully understand the facts in this matter.

Please let me know the disposition of this request as soon as possible by facsimile or telephone.

Thank you for your cooperation in this matter, and feel free to contact me with any questions or comments.

Very truly yours,

Ronald B. Turovsky

Ronald B. Turovsky
Manatt, Phelps & Phillips

RBT:pesl

MANATT
PHELPS
PHILLIPS

A Law Partnership Including
Professional Corporations

Ronald B. Turovsky
Direct Dial: (310) 312-4249
Internet: rturovsky@manatt.com

October 10, 1995

By Overnight Courier

Abel Móntez, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3991 Quarterdeck Office Systems, Inc.

Dear Mr. Móntez:

I. Introduction.

This response is submitted on behalf of Quarterdeck Corporation, formerly known as Quarterdeck Office Systems, Inc. ("Quarterdeck"). It is Quarterdeck's belief that no action should be taken by the Federal Election Commission (the "Commission" or the "FEC") and the Commission should not find that there is probable cause to believe that a violation of the Federal Election Campaign Act of 1971, as amended (the "Act"), has occurred.

II. The Commission's Allegations.

The essence of the factual and legal analysis, enclosed with your letter notifying Quarterdeck that the FEC had found that there is reason to believe a violation had occurred and which explains the basis of that finding, is that, on November 17, 1992, Quarterdeck submitted an invoice to Brown for President (the "Committee") for $151,121 for the lease of computer equipment, and that, on December 1, 1992, the Committee paid Quarterdeck $50,000 for the equipment. The analysis notes that Quarterdeck submitted a second invoice dated December 4, 1992, showing that the amount due was $50,000.

The Commission also notes that Mr. Stanton Kaye has stated that the billings in this instance were not in the normal course of business of Quarterdeck.

Based upon these items, the Commission has concluded that there is reason to believe that Quarterdeck made a contribution of $101,121 by giving the Committee a discount below the usual and normal charge, a discount that is not routinely offered in Quarterdeck's ordinary course of business, thereby violating 2 U.S.C. §441b(a).

III. Quarterdeck's Response.

Based upon its review of the matter, Quarterdeck does not believe that it in fact made a contribution in the amount of $101,121, or any amount. Quarterdeck believes that it in fact charged only the fair market price for the hardware and software involved and that it was paid the fair market price for the hardware and software.

Unfortunately, however, Quarterdeck is hamstrung in its ability to fully and completely respond to the Commission's allegations. These events took place some three years ago. The principal participants in the transaction are no longer officers or employees of Quarterdeck. It has not been possible to explore these issues fully with these individuals. Likewise, it has been difficult to obtain information from the individuals affiliated with the Committee. It therefore is not possible to present to the Commission the kind of affidavits that Quarterdeck originally intended to submit in order to show that no violation has occurred, as Quarterdeck believes to be the case.

Quarterdeck certainly is not a routine offender. Rather, this would be Quarterdeck's first violation. More broadly, Quarterdeck is not sophisticated in the political process. Quarterdeck does not routinely act as a vendor to political committees and therefore was unaware that it was operating in an area of regulation of this nature. Quarterdeck had no idea that it was operating in an area that might lead to a violation and a potential civil penalty. Quarterdeck certainly did not know it was violating any law when it engaged in this activity.

Rather, from Quarterdeck's prospective, it was acting reasonably and appropriately, and, at most, inadvertently ran afoul of rules it did not know existed. Quarterdeck has encountered what Philip Howard, in his recent book, *The Death of Common Sense*, describes as the "syndrome of 'involuntary noncompliance.'" As he wrote:

> Several million small employers operate pursuant to their own moral code, comfortable only in the assurance that they could never figure out the letter of the law if they tried. This is a predicament one witness before Congress termed the syndrome of "involuntary noncompliance."

P. Howard, *The Death of Common Sense, How Law is Suffocating America*, at 31 (1994). While Quarterdeck understands the importance of these laws and the need to regulate campaign activity, it also is true that Quarterdeck did not know it was violating this law and is at most guilty of this sort

The Commission also should factor in the remote nature of this alleged violation. The activities involved events that took place some three years ago. As noted, the participants are no longer affiliated with Quarterdeck. As a practical matter, a new group of officers and employees at Quarterdeck have now inherited and are left to deal with a problem that was created several years ago by others formerly associated with Quarterdeck. It is difficult to justify the imposition of such a severe penalty for remote conduct involving persons no longer affiliated with the entity.

IV. Conciliation Offer and Conclusion.

As noted, Quarterdeck does not believe that any violation has occurred. As also noted, however, Quarterdeck is hamstrung in its ability to respond fully. Quarterdeck also recognizes that there are costs associated with litigation of this matter, and that the Commission may continue to investigate this matter. Quarterdeck also considers this matter a problem created by old management that new management has to clean up. For all of these reasons, Quarterdeck is willing to pay a penalty in order to resolve the matter and move on.

Thank you for your continued courtesies and cooperation throughout this matter. Whatever the outcome, your professionalism is most appreciated.

Very truly yours,

Ronald B. Turovsky

Ronald B. Turovsky
Manatt, Phelps & Phillips

RBT:pesl

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Drug, Hospital & Health Care Employees) MUR 3991
Union, Local 1199)
)

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On August 16, 1995, the Commission found reason to believe that the Drug, Hospital & Health Care Employees Union, Local 1199 ("Respondent") violated 2 U.S.C. § 441b(a) by making an in-kind contribution of $57,695.97 to the Brown for President Committee. On the same date, the Commission determined to enter into conciliation prior to a finding of probable cause to believe with the Respondent. A conciliation agreement approved by the Commission was mailed to the Respondent on August 28, 1995.

II. DISCUSSION

Attached is a conciliation agreement dated September 15, 1995, that has been signed by the Respondent.

III. RECOMMENDATIONS

1. Accept the attached conciliation agreement with respondent Drug, Hospital & Health Care Employees Union, Local 1199;

2. Close the file with respect to respondent Drug, Hospital & Health Care Employees Union, Local 1199; and

3. Approve the appropriate letter.

11/-1/95
Date

Lawrence M. Noble
General Counsel

Attachments

1. Conciliation agreement - Drug, Hospital & Health Care Employees Union, Local 1199
2. Photocopy of civil penalty check

Staff assigned: Abel P. Móntez

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Drug, Hospital & Health Care Employees Union, Local 1199.	)	MUR 3991
	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on October 11, 1995, the Commission decided by a vote of 5-0 to take the following actions in MUR 3991:

1. Accept the conciliation agreement with respondent Drug, Hospital & Health Care Employees Union, Local 1199, as recommended in the General Counsel's Report dated October 5, 1995.

2. Close the file with respect to respondent Drug, Hospital & Health Care Employees Union, Local 1199.

3. Approve the appropriate letter, as recommended in the General Counsel's Report dated October 5, 1995.

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

Attest:

10-11-95
Date

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

Received in the Secretariat: Thurs., Oct. 05, 1995 11:17 a.m.
Circulated to the Commission: Thurs., Oct. 05, 1995 4:00 p.m.
Deadline for vote: Wed., Oct. 11, 1995 4:00 p.m.

lrd

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 18, 1995

Lawrence Scherer, Esq.
Meyer, Suozzi, English & Klein
One Commerce Plaza
Suite 1810
Albany, NY 12260

RE: MUR 3991
Drug, Hospital & Health Care
Employees Union, Local 1199

Dear Mr. Scherer:

On October 11, 1995, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your client's behalf in settlement of a violation of 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter as it pertains to the Drug, Hospital & Heath Care Employees Union, Local 1199.

This matter will become public within 30 days after it has been closed with respect to all other respondents involved. Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the Respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

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. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Abel P. Móntez
Attorney

Enclosure
Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Drug, Hospital & Health Care Employees Union, Local 1199	)	MUR 3991
	)	
	)	

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that Drug, Hospital & Health Care Employees Union, Local 1199 ("Respondent") violated 2 U.S.C. § 441b(a).

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

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

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

III. Respondent enters voluntarily into this agreement with the Commission.

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

1. Edmund Brown, Jr. was a candidate for the nomination of the Democratic Party for the office of President of the United States for the election held in November 1992. The Brown for

President Committee ("the Committee") is the authorised committee of Mr. Brown.

2. Blaine Quick is the treasurer of the Committee.

3. Pursuant to 26 U.S.C. § 9038(a), the Commission conducted an audit and examination of the Committee's receipts, disbursements and qualified campaign expenses.

4. Pursuant to the Federal Election Campaign Act of 1971, as amended ("the Act") a "contribution or expenditure" includes "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value" to any candidate or campaign committee in connection with a federal election. 2 U.S.C. § 441b(b)(2). See also 11 C.F.R. § 114.1(a)(1).

5. The Act provides that it is unlawful for any labor organization to make a contribution or expenditure in connection with any federal election. 2 U.S.C. § 441b(a). Furthermore, candidates and political committees may not knowingly accept or receive such prohibited contributions. Id.

6. The Commission's regulations provide a "safe harbor" for political committees and labor organizations, if a person (other than an official, member and employee of the labor organization) uses labor organization facilities for activity in connection with a Federal election. 11 C.F.R. § 114.9(d).

7. The person is required to reimburse the labor organization within a commercially reasonable time in the amount of the normal and usual rental charge for the use of the facilities. Id.; 11 C.F.R. 100.7(a)(1)(iii)(B).

8. The New York primary was held on April 7, 1992. To facilitate its participation in the primary, the Committee used the Respondent's facilities from March 30, 1992 to April 10, 1992. The Respondent incurred expenses for food and refreshments, rent, printing, advertising, telephone, staff compensation, and other miscellaneous items.

9. The cost for the use of Respondent's facilities totaled $18,198.60.

10. In addition, Respondent made $39,497.37 in expenditures on behalf of the Committee that were not associated with the use of the Union's facilities.

11. Respondent's failure to bill the Committee for six months for the use of its facilities is not commercially reasonable and resulted in an in-kind contribution to the Committee. Subsequently, Respondent submitted to the Committee an invoice requesting payment, and payment from the Committee was issued on October 27, 1992.

12. Respondent's provision of goods and services to the Committee resulted in an in-kind contribution to the Committee.

V. Respondent violated 441b(a) by making an in-kind contribution of $57,695.97 to the Committee.

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of Fourteen Thousand Dollars ($14,000) pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein, or on its own motion, may review compliance with this

agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

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

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

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

FOR THE COMMISSION:

Lawrence M. Noble by KBC
Lawrence M. Noble
General Counsel

October 18, 1995
Date

FOR THE RESPONDENT:

(name)
(position)

9-15-95
Date

Dennis Rivera
President
1199 National Health & Human Service Employees Union

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 20, 1995

VIA FACSIMILE & FIRST CLASS MAIL
R. Brian Oxman
Oxman & Jaroscak
14126 East Rosecrans Boulevard
Santa Fe Springs, CA 90670

RE: MUR 3991
Brown for President and Blaine Quick
as treasurer

Dear Mr. Oxman:

On August 16, 1995, Brown for President Committee and Blaine Quick, as treasurer, were notified that the Federal Election Commission determined to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. On that same date, they were sent a conciliation agreement offered by the Commission in settlement of this matter.

On September 7, 1995, you requested an extension to respond to the violation stated in the Factual and Legal Analysis. The Office of General Counsel granted you a 20-day extension. Your response was due on October 5, 1995. Thereafter, you requested an additional extension. The Office of General Counsel granted you a 25-day extension. Your response was due on October 30, 1995. I called your office on November 1 and November 3, 1995 and left messages with your receptionist. On November 3, 1995, you contacted Alex Boniewicz, a member of the Audit Division, to request various documents associated with the Commission's Final Audit Report of Brown for President. On November 6, 1995, Mr. Boniewicz called you to inform you that you must contact me about your document request, given that your time to respond expired on October 30, 1995. I called your office on November 7, 1995 and left a message with your receptionist.

Please note that conciliation negotiations entered into prior to a finding of probable cause to believe are limited to a maximum of 30 days. To date, you have not responded to the proposed agreement. The 30-day period for negotiations will soon expire. Unless we receive a response from you within five days, this Office will consider these negotiations terminated and will proceed to the next stage of the enforcement process.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Abel P. Móntez
Attorney

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 20, 1995

VIA FACSIMILE & FIRST CLASS MAIL
R. Brian Oxman
Oxman & Jaroscak
14126 East Rosecrans Boulevard
Santa Fe Springs, CA 90670

RE: MUR 3991
Chromosohm Media Inc.

Dear Mr. Oxman:

On August 16, 1995, Chromosohm Media Inc. was notified that the Federal Election Commission determined to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. On that same date, Chromosohm Media Inc. was sent a conciliation agreement offered by the Commission in settlement of this matter.

On September 25, 1995, you requested an extension to respond to the violation stated in the Factual and Legal Analysis. The Office of General Counsel granted you an extension. Your response was due on October 5, 1995. Thereafter, you requested an additional extension. The Office of General Counsel granted you a 25-day extension. Your response was due on October 30, 1995. I called your office on November 1 and November 3, 1995 and left messages with your receptionist. On November 3, 1995, you contacted Alex Boniewicz, a member of the Audit Division, to request various documents associated with the Commission's Final Audit Report of Brown for President. On November 6, 1995, Mr. Boniewicz called you to inform you that you must contact me about your document request, given that your time to respond expired on October 30, 1995. I called your office on November 7, 1995 and left a message with your receptionist.

Please note that conciliation negotiations entered into prior to a finding of probable cause to believe are limited to a maximum of 30 days. To date, you have not responded to the proposed agreement. The 30-day period for negotiations will soon expire. Unless we receive a response from you within five days, this Office will consider these negotiations terminated and will proceed to the next stage of the enforcement process.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Abel P. Móntez

Abel P. Móntez
Attorney

LAW OFFICES OF
OXMAN & JAROSCAK
14126 EAST ROSECRANS BOULEVARD
SANTA FE SPRINGS, CALIFORNIA 90670

TEL: (310) 921-5058
FAX: (310) 921-2298

TO: Mr. Abel Montez FAX NO. (202) 219-3923

DATE: November 29, 1995 TIME: 5:00 p.m. PDST

RE: MUR 3991 PAGES:
Brown for President

Dear Mr. Montez:

We have been attempting to complete our response to the above-indicated MUR for several weeks. However, we cannot complete our response without the documents we have requested from the Commission. The Brown for President Committee delivered these documents to the Commission and does not have copies of them.

These documents form the basis for the controversy and we cannot inteligently respond because we do not have copies of them. We have requested them by telephone from several commission employees without success.

Please supply us with:

(1) The invoice from Quarterdeck to the Brown for President Commission (including a specification and description of the equipment which was leased);

(2) The credit card receipts on which the Commission bases its claim there were improper advances by Brown for President Staff.

(3) The invoice from Local 1199 to the Brown for President Committee.

We are prepared to respond immediatly upon having these documents.

Very truly yours,

R. Brian Oxman

RBO:ma

LAW OFFICES OF
OXMAN AND JAROSCAK
14126 EAST ROSECRANS BOULEVARD
SANTA FE SPRINGS, CALIFORNIA 90670
(310) 921-5058
TELECOPIER (310) 921-2298

November 39, 1995

Mr. Abel Montez
Federal Election Commission
Office of General Counsel
999 "E" Street, N.W.
Washington, D.C. 20463

Re: Brown for President
MUR 3991

Dear Mr. Montez:

Enclosed are the following documents:

(1) Declaration of Jodie Evans Re: Chromosohm;

(2) Declaration of Joseph Sohm Re: Chromosohm;

(3) Declaration of Jodie Evans re: Quarterdeck;

(4) Declaration of Jodie Evans Re: Labor Organization Expenditures;

(5) Declaration of R. Brian Oxman Re: Brown for President's Response to MUR 3991.

As explained in the Declaration of R. Brian Oxman, these declarations deal with three (3) of the four (4) issues raised in MUR 3991. They do not deal with Campaign Staff Advances and they only partially deal with Quarterdeck Office Systems. We are unable to provide a full response because we do not have the documents outlined in our prior letters and in the Declaration of R. Brian Oxman.

When we have received the documents necessary to complete our response, we will promptly do so. We will also discuss with you the Conciliation Agreement you have forwarded to us.

We shall keep you advised of further developments.

Very truly yours,

R. Brian Oxman

RBO:ma
Enclosures

DECLARATION OF JODIE EVANS
RE: CHROMOSOHM

I, Jodie Evans, declare and say:

I am a resident of the County of Los Angeles, State of California, and I have served as the Campaign Manager for Brown for President from December, 1991, through the present. I submit this declaration in response to the Federal Election Commission's letter of August 28, 1995, concerning MUR 3991 and Chromosohm Media, Inc.

In late January, 1992, a fund raising event was being planned by a group of Los Angeles volunteers to take place on February 6, 1992. Mr. Joseph Sohm was invited to the meeting by a volunteer that was working in the office. Mr. Sohm asked the Committee if he would be allowed to work on the group that arranged for the talent, coordination, and production of the show.

The total amount that would be raised from this event was targeted at $35,000.00. Because of the $100.00 per person limitation the Campaign had placed on contributions, fund raisers in the traditional sense did not reap significant benefits. The cost of fundraisers had to be kept at a minimum so that the cost would not exceed 10% to 20% of the expected gross from the event.

As a result of the highly limited usefulness of fundraisers, the "We the People CAN" event was one (1) of only ten (10) fund raisers throughout the entire campaign. To raise $35,000.00 would take a gathering of approximately 850 people, at approximately $50.00 a person. The "We the People CAN" fundraising event was targeted at gathering 850 people and there was no room to accommodate more than 850 people at this event.

Mr. Sohm wished to utilize this program as a part of his portfolio so that he could draw attention from the media attending the event. He wished to generate other work for himself in the future. As a result, he was receiving more from us by being associated with the Campaign than the Campaign was receiving from him.

I informed Mr. Sohm he was to incur no expense without my approval and I explained to him our $100.00 limitation on contributions and our expected receipt of $50.00 per attendee. He was to produce a multi-media show entitled "We the People CAN" for the live audience and for videotaping. This included the use of slide projectors and screens on the stage. He was to direct when various people spoke and appeared on stage.

I gave him a budget of $2,500.00 which consisted of a $1,500.00 fee for his services and up to $1,000.00 in expenses. I informed Mr. Sohm I did not want an elaborate production because the event would raise at most $35,000.00, and nothing more than $2,500.00 would be justified by the event. The Campaign signed a written contract with Mr. Sohm which provided for a $2,500.00 budget.

The reasonable value of the services rendered by Mr. Sohm and Chromosohm, Inc., was $2,500.00. The event, which was designed to attract 850 people did not justify any greater expense. There were numerous other expenses the Campaign made separate from Mr. Sohm which were associated with this event and under no circumstance would I allow or permit any expenditure of more than $2,500.00 for talent and program coordination.

The fundraiser was held on February 6, 1992. We raised approximately $35,000.00. However, Mr. Sohm expended far more than we had agreed on and he knew I was quite upset.

On February 10, 1992, I received an invoice from Mr. Sohm where he charged the Campaign $4,168.75, which represented a $1,668.75 cost overrun. I was not pleased with this extra expenditure and I not only told Mr. Sohm I was not pleased, but also I hit the roof. However, Mr. Sohm was paid $4,168.75.

I told Mr. Sohm my idea of the show was much less than his and as far as I was concerned everyone had come to see Governor Brown and we did not need the additional costs which Mr. Sohm had incurred. Further, Mr. Sohm had nothing to do with the appearance of the celebrities at the program because they were all Governor Brown's old friends and they had not been contacted by Mr. Sohm.

Mr. Sohm's February 10, 1992, letter amounted to Mr. Sohm's efforts to justify his $1,668.75 cost overrun. He claimed he had billed the Democratic National Party $26,000.00 for a (5) five minute slide show. Not only do I find this claim hard to believe, but also I have never seen any evidence of this after-the-fact "puffed up" claim.

Further, whatever the DNC may or may not have done with Mr. Sohm did not alter the nature of our fundraising event designed to raise $35,000.00. Our contract with Mr. Sohm called for a $2,500.00 budget and for services to be rendered accordingly. We did not request any excessive services, nor did we receive any excessive in-kind contribution because there is no possible way a $26,000.00 cost could be incurred in connection with an event which was designed to raise $35,000.00.

Mr. Sohm claimed the estimated retail value of his participation in the "We the People CAN" event would be

$75,000.00, and that his video production was worth an additional $75,000.00, for a total of $150,000.00. I found this claim incredible "puffing" and no one would have paid $150,000.00 for a slide show presentation where the contract called for a $2,500.00 budget. At a cost of $150,000.00 as Mr. Sohm claimed, this would represent an expenditure of $176.47 per person where contributions were limited to $100.00 per person and actual receipts were less than $42.00 per person. This would have represented a significant loss.

Mr. Sohm's claims of costs were not only absurd, but also they were the product of him puffing up his own importance in order to justify the unacceptable $1,668.75 cost overrun. Mr. Sohm got the exposure he wanted from his participation in the program and what he did as part of the program was very self-serving, as was his letter of February 10, 1992.

Anyone else who was there that night would give a totally different perspective from Mr. Sohm's claims. They would confirm the value of his presentation was less than $2,500.00. There is no logic to spend $150,000.00 on a program for an event that was designed to gross $35,000.00.

The fact Mr. Sohm was tooting his own horn so as not to get his hands slapped too hard as a result of his $1,668.75 cost overrun, does not create an illegal contribution. His statements were self-serving unreasonable "puffing," and not only was Mr. Sohm paid more than was agreed, but also more than was approved.

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct.

Executed this 30th day of November, 1995, at Santa Monica, California.

Jodie Evans

DECLARATION OF JOSEPH SOHM
RE: CHROMOSOHM, INC.

I, Joseph Sohm, declare and say:

I am a resident of the County of Ventura, State of California, and I am president of Chromosohm, Inc. Chromosohm, Inc., is my wholly owned corporation and I am the sole owner, director, and officer of the corporation. I have no other employees. I utilize Chromosohm, Inc., exclusively to market my services and products that I offer clients and I bill less than $100,000 a year in services and products for various multi-media projects I do throughout the year.

I am a former American History Teacher. I taught for three (3) years in St. Louis County, Missouri. I am a professional photographer and I produce and lecture on themes of the American Experience. For the past fifteen (15) years I have devoted myself to creating and producing educational and inspirational media products on this theme.

In January of 1992, I participated in my first ever Presidential political organizing event. The Brown for President Campaign hosted a meeting at the home of Jodie Evans, who was the Campaign Manager, for the purpose of creating a fund raiser for Candidate Brown. The event was called "We the People CAN" and was to be held on February 6, 1992.

I was asked to create and produce a multi-media show which would take place during the fund raising event. I was reluctant to do so because I had no previous experience in working in the field of politics. I initially thought I should provide the service on a volunteer basis.

However, it became clear that the production process was a significant undertaking and I would incur several thousand dollars in expenses. I felt it would cost approximately $4,000.00 to put the show on.

Jodie Evans, who was the Brown for President Campaign Manager, informed me she could not budget $4,000.00 for the event. She asked if I could do the show for less and cut down my production to a budget of $2,500.00. I told her I would certainly try and I signed a contract providing I would produce the program within this budget. A copy of the contract is attached.

At the conclusion of the event, I invoiced Ms. Evans for $4,168.75. As Campaign Manager she was rightfully concerned about the cost of the event because I had gone

over budget. However, this was closer to the amount which I had originally figured the production would cost.

I wrote Ms. Evans a note which included the phrase the Federal Election Commission has questioned. The $150,000.00 to which I alluded was the sum total of the "commercial value" of the production if I was able to resell it on the commercial market. This would include marketing the video tape and placing it in the video market distribution system where it would be sold at retail. However, there was no market for the video and it was never marketed for resale.

I believed it could have generated $150,000.00 in sales, although I knew I would not be permitted to sell this one (1) time media event production. The $150,000.00 was the retail sale value, not the production cost value. The production cost value was $4,168.75, which is exactly what I billed the Brown for President Campaign.

Although I can understand that the Federal Election Commission might interpret that I "discounted my services," this was not the case and this would be a misinterpretation of my meaning. My invoice for $4,168.75 was payment in full for expenses which are itemized in the same letter the Commission has quoted. Further, because all of the performers, celebrities, and the candidate himself, volunteered their services for purposes of fundraising, the value of their performances, which was significant, was not part of my expenses.

My invoice to Ms. Evans was spoken as a political neophyte. I had no prior understanding of how the Federal Election Commission would over-react to my efforts to help Ms. Evans feel better about the high cost of the event. I was simply acting as an enthusiastic supporter of Mr. Brown.

What I learned from the 1992 "We the People" campaign is that hundreds of thousands of volunteers across America offered their services and talents because Mr. Brown offered a voice for them. It is my understanding as an American History teacher and citizen that this is the strength and resilience of the American electoral and political system. I cannot understand how the Commission would interpret my view of the "retail value" of a wonderful production, which was never sold at retail, as an illegal contribution.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

Executed this 6th day of November, 1995, at Ojai, California.

Joseph Sohm

Joseph Sohm

DECLARATION OF JODIE EVANS
RE: QUARTERDECK

I, Jodie Evans, declare and say:

I am a resident of the County of Los Angeles, State of California, and I have served as the Campaign Manager for Brown for President from December, 1991, through the present. I submit this declaration in response to the Federal Election Commission's letter of August 28, 1995, concerning MUR 3991 and Quarterdeck Office Systems.

In late 1991, I contacted Mr. Stanton Kaye of Quarterdeck Office Systems to inquire about the leasing of computers for the Brown for President Campaign. I had met Mr. Kaye before and knew he was in the computer business. However, neither I nor anyone else in the Brown for President Committee had any prior contract or business dealings with Quarterdeck Office Systems.

I explained to Mr. Kaye the Campaign's need for computers and the specialized software requirements for running a nationwide political campaign for the Presidential nomination of the Democratic Party. I proposed to Mr. Kaye that the Campaign lease from Quarterdeck used computers which were outdated and which Quarterdeck had in storage. Because these computers were not being used I suggested the Campaign would be doing something which would be of value to Quarterdeck as well as the Campaign.

Mr. Kaye informed me that Quarterdeck did not usually lease computer equipment. However, they were interested and it would cost approximately $50,000.00 to lease the computer equipment to the Campaign through the convention in July, 1992. If the Campaign wished to extend the term of the lease, it would be discussed at that time.

I told Mr. Kaye a renewal option was appropriate because once the Campaign was over we would have no further use for the computers. We needed only a temporary use of the computers. This type of lease was well suited to the Campaign's needs.

Mr. Kaye told me Quarterdeck had many used and outdated computers in storage for which it had no customers because of the outmoded nature of both the hardware and software. He thought he could make arrangements to lease these computers to the Campaign.

At the same time I was discussing this lease with Quarterdeck, I had also discussed similar arrangements with Below Tobe, Penn Life, Marcus and Millichap. These were

companies who had excess computers which weren't being used. The lease prices quotations from them were the same as Quarterdecks.

However, Quarterdeck's computers and software were more in line with our needs. I considered the Quarterdeck quotation the best and most reasonable quote. The Quarterdeck arrangement seemed a fair deal.

The other companies I was talking to told me that it would take three (3) to six (6) months to make sure our needs were satisfied and that billing would follow when they were sure the computers worked for us. Quarterdeck also told me they would bill only after they were sure the system worked for us and met the campaign's needs. We had a specialized need for computer software in order to prepare matching funds reports. Each time I contacted a computer company they informed me the Campaign's software needs were "tricky" and whenever they installed specialized software it was standard to wait three (3) to six (6) months to see how the software functioned along with the particular hardware.

I was only approaching companies that had large inventories of computers that were in storage or not being used. This was a cost saving decision on my part for the Campaign. What we were going to pay these companies was more than they would get with their computers in the cupboards.

There is no rule in the Federal Elections Campaign Act or promulgated by the Federal Election Commission which prohibits a campaign manager from making the best deal available for the campaign. In agreeing with Quarterdeck to lease used and outmoded computers for the Campaign, the Campaign received no discount, unreasonable benefits, in-kind contribution, or corporate contribution. The value of the use of the computers was $50,000.00 and this was the amount which was both billed to and paid by the Brown for President Campaign.

I made no specific agreement with Mr. Kaye concerning when the bill would be submitted by Quarterdeck. However, I did expect and require that industry standards would be observed in Quarterdeck's billing practices. That industry standard was a period of three (3) to (6) months before payment was due because of the specialized requirements of the software and compatibility of the hardware.

The Campaign did not request nor did it receive an extension of credit. The Campaign would have received this billing standard from any company in the industry. This billing standard was both in Quarterdeck's and every other computer firm's normal course of business.

The Campaign received a bill from Quarterdeck dated November 17, 1992, for $151,121.00. This bill was three (3)

times the amount of the quote I had received from Mr. Kaye. I telephoned Mr. Kaye and complained I could have purchased the computers for less than $150,000.00, and while we had thought about purchasing the equipment, we had agreed upon a $50,000.00 lease.

Mr. Kaye was under the impression we had not decided whether we were going purchase the computers or just lease them. However, I told him we had agreed we were only leasing the computers and were returned to Quarterdeck.

Mr. Kaye informed me he had no idea where his staff had come up with these numbers and he apologized for the confusion. I informed Mr. Kaye that under Federal Election Commission regulations he was to charge the Campaign the fair market value of the leased computers. Further, we had agreed from the start that $50,000.00 was to be the lease price of the computers.

Mr. Kaye informed me his company would stick by its original agreement with the Campaign. He told me to pay the original agreed upon amount of $50,000.00 and this amount was paid on December 1, 1992. There was no discount involved in this transaction and the agreed upon amount of $50,000.00 represented the reasonable value of the computers.

There was no in-kind contribution from Quarterdeck to the Campaign, nor any discount. We received nothing from Quarterdeck which any other lessee with a similar requirement would not have received. This lease was at the the fair market value of the computers and according to the ordinary and usual course of business in the industry.

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct.

Executed this 30th day of November, 1995, at Santa Monica, California.

Jodie Evans

Jodie Evans

DECLARATION OF JODIE EVANS
RE: LABOR ORGANIZATION EXPENDITURES

I, Jodie Evans, declare and say:

I am a resident of the County of Los Angeles, State of California, and I have served as the Campaign Manager for Brown for President from December, 1991, through the present. I submit this declaration in response to the Federal Election Commission's letter of August 28, 1995, concerning MUR 3991 and Labor Organization Expenditures.

In March, 1992, Mr. Dennis Rivera was assisting the Brown for President Campaign in connection with the New York Primary scheduled for April 7, 1992. Mr. Rivera was the President of the Drug, Hospital & Health Care Employees Union, Local 1199 in New York. He was a local organizer for the campaign.

As a local organizer for the Brown for President Campaign, Mr. Rivera was informed of the rules of the campaign which had been applied to all state campaigns for all of the primaries. Mr. Rivera was aware of the fact he was to report to the Brown for President Committee all expenses he had incurred for the campaign, all amounts he had expended for the campaign, and all outstanding obligations. Any expenditures were to be approved by the Brown for President Committee in advance, and such expenditures were to be made by the Brown for President Committee and no other person, business, or other entity.

In March, 1992, Mr. Rivera requested the use of a union hall facility at the Drug, Hospital & Health Care Employees Union, Local 1199 for the New York primary which was to take place on April 7, 1992. Neither I nor anyone else at the Brown for President Committee was told any contact, arrangement, or request made between Mr. Rivera and Local 1199. Further, the nature of the rental or planned expenditures were not submitted to me in advance as required by the rules established for the campaign.

Between the dates of March 30, 1992, to April 10, 1992, Local 1191 provided various facilities and made various expenditures in connection with the Brown for President Campaign and the New York Primary on April 7, 1992. Neither I nor anyone at the Brown for President Committee were aware of these expenditures. Neither I nor anyone at the Brown for President Committee requested these expenditures and we had no notice or knowledge the expenditures were being made.

The first time anyone at the Brown for President Committee was made aware that Local 1199 had made any expenditures or that their facilities were utilized in

connection with the campaign was within a few weeks of the bill being submitted to the Brown for President Committee in October, 1992. I spoke to Dennis Rivera and was informed Local 1199 was owed money for the use of its facilities and expenditures made during the campaign. Mr. Rivera acknowledged Local 1199 had been remiss in not submitting an invoice to the Brown for President Committee and that he frankly did not know how much was owed because records were missing, invoices had been misplaced, and the union was terribly disorganized concerning this matter.

I informed Mr. Rivera the union it must submit an immediate invoice to the Brown for President Committee. However, because records were missing and no one at Local 1199 knew what was done in connection with the campaign, it was not possible to know how much was owed. I requested the union provide its best estimate so that payment could be made immediately.

Sometime in October, 1992, Mr. Rivera submitted an estimated invoice. I complained to him that the Brown for President Committee had not authorized any of these expenditures. Mr. Rivera told me he would review his estimate.

On October 27, 1992, I had a telephone conversation with Dennis Rivera. He informed me the amount owing was $57,156.00, and he provided a breakdown of how the amount was calculated. This was the first time I was made aware of the amount which was owing to Local 1199.

I issued a check for $57,156.00 on October 27, 1992, and delivered it to Local 1199. Local 1199 did not issue an invoice for the amount until the next day, October 28, 1992. As soon as there was any means by which to know the amount owing to Local 1199, the amount was paid.

Had I or anyone at the Brown for President Committee been made aware of the fact that Local 1199 was providing facilities or making expenditures, we would have determined the appropriateness of these activities and made certain the expenditures and rentals were immediately reimbursed. However, no one at the Brown for President Committee was aware of these facts, the nature of the expenditures, or the existence of the use of union facilities. The Brown for President Committee had no ability to either estimate or report the expenditures made by Local 1199 because we had no notice or knowledge of their activities.

As soon as the Brown for President Committee was informed of the existence of Local 1199's activities and expenditures, we immediately demanded an accounting and an invoice to pay for the expenditures and rentals. The invoice was submitted on October 28, 1992. The Brown for President Committee paid the amount due on October 27, 1992,

and an invoice reflecting that amount was subsequently issued on October 28, 1995.

The Federal Election Commission has requested an explanation of why the invoice was not paid until October 27, 1992, why the reimbursement was not made purportedly within a commercially reasonable time, and why the expenditure was not reported on the Brown for President Committee's reports to the Federal Election Commission. However, the Brown for President Committee did not know of the existence of this expenditure until October, 1992, and the payment was made on October 27, 1992. This payment was made within a commercially reasonable time of notice of the existence of these expenditures, and there was neither a knowing nor an inadvertent failure to report this debt to the Commission.

The Brown for President Committee did not knowingly accept or receive any contribution or expenditure from Local 1199. We did not know of Local 1199's activities until October, 1995. As soon as the nature of the activities could be verified, the Brown for President Committee paid the amount owing and there was no knowing or intentional receipt of any contribution, in kind or otherwise, from Local 1199.

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct.

Executed this 30 day of November, 1995, at Santa Monica, California.

Jodie Evans

Jodie Evans

DECLARATION OF R. BRIAN OXMAN
RE: BROWN FOR PRESIDENT'S RESPONSE TO MUR 3991

I, R. Brian Oxman, declare and say:

I am an attorney at law and I have been retained by the Brown for President Committee to assist them in connection with MUR 3991 now pending before the Federal Election Commission. I submit this declaration to explain the Brown for President Committee's inability to respond to issues involveing Quarterdeck Office Sustems and Campaing Staff Advances

We have retained the services of Mr. Frank Enos, President of Uptime Computer Service, Inc., to assist the Brown for President Campaign regarding Quarterdeck Office Systems. Mr. Enos has reviewed all of the available documents, statements, and paperwork concerning the Quarterdeck contract with the Brown for President Committee and is prepare to provide an evaluation of the market and industry standards for the leasing of computers to the Committee in 1992. However, Mr. Enos and is unwilling to provide a final expert opinion concerning this matter until he can review the invoice from Quarterdeck to the Brown for President Committee.

Mr. Enos' opinion on the reasonablness of the billing practice involved in this matter is of central importance to the Brown for President Committee's response to the Federal Election Commisson's MUR 3991. He cannot render an opinion without appropriate documentation allowing an evaluation of the nature and types of computers involved. The invoice is in the exclusive possession of the Federal Election Commission and Mr. Enos cannot proceed until he receives a copy of the invoice.

In connection with the Campaign Staff Advances, we are unable to prepare a response to MUR 3991 because the Brown for President Campign does not have copies of the credit card statements or materials upon which the Commission has based its claims regarding Staff Advances. These documents were all delivered to the Federal Election Commission and the Brown for President Committee does not have copies of them. We are unable to respond to the Staff Advances issues until we are able to review these documents.

The Brown for President Committee has responded to the issues of Chromoshom, Inc. and Local 1199. In addition, we have partially responded to the issues involving Quarterdeck Office Systems. We have been and now are prepared to immediatly respond to all of the remaining issues when we have reviewed the invoice from Quarterdeck and the credit card receipts for the Brown for President Committee staff.

We are certain these matters can be resolved. We request the Federal Election Commission provide us with these documents so that these matters can be resolved.

I declare under penalty of perjury under the laws of the State of Califonria the foreoging is true and correct.

Executed this 30 day of November, 1995, at Santa Fe Springs, California.

R. Brian Oxman

FAXED 12/8/95

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 8, 1995

VIA FACSIMILE & FIRST CLASS MAIL
R. Brian Oxman
Oxman & Jaroscak
14126 East Rosecrans Boulevard
Santa Fe Springs, CA 90670

RE: MUR 3991
Brown for President and Blaine Quick
as treasurer

Dear Mr. Oxman:

The Office of General Counsel has received your partial response, dated November 29, 1995, to the Federal Election Commission's reason to believe findings that the Brown for President Committee and Blaine Quick, as treasurer ("Respondents"), violated 2 U.S.C. §§ 441a(f), 434(b)(8), and 441b(a). On November 29, 1995, this Office received a letter, via facsimile, requesting documents associated with the Commission's findings. This letter explains that you need these documents in order to complete your response to the Commission's findings. This letter states that you had previously requested these documents by telephone from several Commission employees "without success."

As state in previous correspondence to you, your response was due on October 30, 1995.[1] I called your office on November 1 and November 3, 1995, and left messages with your receptionist. You did not return my phone calls. The first time this Office was made aware that you were requesting documents was on November 3, 1995, when you contacted Alex Boniewicz, a member of the Audit Division. At this point, your time to respond had already expired. On November 6, 1995, Mr. Boniewicz called you and informed you that you were required to contact me about your document request. I called your office on November 7, 1995, and left a message with your receptionist. You did not return my telephone call. Therefore, on November 20, 1995, this Office sent you a letter stating that you had five days in which to respond, otherwise this Office would proceed to the next stage of the enforcement process.

[1] The response was originally due within 15 days of Respondents' receipt of an August 28, 1995 letter informing Respondents of the Commission's reason to believe findings. This Office granted respondents two extensions, resulting in a due date of October 30, 1995.

On December 6 and December 7, 1995, I called your office in order to discuss your November 29, 1995 document request letter. I left messages with your receptionist for you to contact me. Again, you did not return my phone calls.

Please be advised that the documents you have requested will be forwarded to you as soon as possible, and that you will be given ten days from your receipt of the documents to complete your response. After this Office has reviewed your response, we will be in contact with you in order to discuss conciliation negotiations. If you have any questions, contact me at (202) 219-3690

Sincerely

Abel P. Móntez

Abel P. Móntez
Attorney

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 20, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

R. Brian Oxman
Oxman & Jaroscak
14126 East Rosecrans Boulevard
Santa Fe Springs, CA 90670

RE: MUR 3991
Brown for President and Blaine Quick
as treasurer

Dear Mr. Oxman:

The Office of General Counsel has received your partial response, dated November 29, 1995, to the Federal Election Commission's reason to believe findings that the Brown for President Committee ("Committee") and Blaine Quick, as treasurer, violated 2 U.S.C. §§ 441a(f), 434(b)(8), and 441b(a). On November 29, 1995, this Office received a letter, via facsimile, requesting documents associated with the Commission's findings. Enclosed are the following documents that you have requested: (1) the invoices from Quarterdeck Office Systems to the Committee; (2) the invoices from the Drug, Hospital & Health Care Employees Union, Local 1199; and (3) documents associated with advances made by Committee employees.

Please be advised that you have ten days from your receipt of these documents to complete your response. If you have any questions, contact me at (202) 219-3690.

Sincerely

Abel P. Móntez

Abel P. Móntez
Attorney

Enclosures

1. Quarterdeck Office Systems invoices and documents
2. Drug, Hospital & Health Care Employees Union, Local 1199 invoices and documents

3.a. Audit Division analysis of Committee's employee advances
b. Documents associated with Jodie Evans' advances
c. Documents associated with Linda Bourbeau's advances
d. Documents associated with Michael C. Bourbeau's advances
e. Documents associated with Robert Klahn's advances

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3991
Quarterdeck Office Systems, Inc.	)	
	)	
	)	

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On August 16, 1995, the Commission found reason to believe that Quarterdeck Office Systems, Inc. ("Respondent") violated 2 U.S.C. § 441b(a) by making an in-kind contribution of $101,121 to the Brown for President Committee. On the same date, the Commission determined to enter into conciliation prior to a finding of probable cause to believe with the Respondent.

We recommend that the Commission accept this conciliation agreement and close the file with respect to the Respondent.

III. RECOMMENDATIONS

1. Accept the attached conciliation agreement with respondent Quarterdeck Office Systems, Inc.;

2. Close the file with respect to respondent Quarterdeck Office Systems, Inc.; and

3. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

12/7/95
Date

BY: Kim Bright-Coleman
Associate General Counsel

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Quarterdeck Office Systems, Inc.) MUR 3991

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on December 15, 1995, the Commission decided by a vote of 5-0 to take the following actions in MUR 3991:

1. Accept the conciliation agreement with respondent Quarterdeck Office Systems, Inc., as recommended in the General Counsel's Report dated December 7, 1995.

2. Close the file with respect to respondent Quarterdeck Office Systems, Inc.

3. Approve the appropriate letter, as recommended in the General Counsel's Report dated December 7, 1995.

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

Attest:

12-15-95
Date

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

Received in the Secretariat: Thurs., Dec. 07, 1995 4:53 p.m.
Circulated to the Commission: Fri., Dec. 08, 1995 12:00 p.m.
Deadline for vote: Fri., Dec. 15, 1995 4:00 p.m.

lrd

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 21, 1995

Ronald B. Turovsky, Esq.
Manatt, Phelps & Phillips
11355 West Olympic Blvd.
Los Angeles, CA 90064-1613

RE: MUR 3991
Quarterdeck Office Systems, Inc.

Dear Mr. Turovsky:

On December 15, 1995, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your client's behalf in settlement of a violation of 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter as it pertains to Quarterdeck Office Systems, Inc.

This matter will become public within 30 days after it has been closed with respect to all other respondents involved. Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the Respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

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. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Abel P. Móntez

Abel P. Móntez
Attorney

Enclosure
Conciliation Agreement

E THE FEDERAL ELECTION COMMISSION

In the fice Systems) MUR 3991
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CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that Quarterdeck Office Systems ("Respondent") violated 2 U.S.C. § 441b(a).

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

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

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

III. Respondent enters voluntarily into this agreement with the Commission.

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

1. Edmund Brown, Jr. was a candidate for the nomination of the Democratic Party for the office of President of the United States for the election held in November 1992. The Brown for President Committee ("the Committee") is the authorized committee of Mr. Brown.

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2. Blaine Quick is the treasurer of the Committee.

3. Pursuant to 26 U.S.C. § 9038(a), the Commission conducted an audit and examination of the Committee's receipts, disbursements and qualified campaign expenses.

4. Respondent, an incorporated commercial vendor, located in Santa Monica, California, had computer software and hardware in storage.

5. Respondent leased these computers to the Committee to be used during the campaign.

6. On November 17, 1992, Respondent issued the Committee an invoice for $151,121. The invoice specifically itemized the equipment and services provided to the Committee.

7. On December 1, 1992, the Committee issued a check in the amount of $50,000 to Respondent for miscellaneous computer software and hardware. Attached to the check was the November 17, 1992 invoice. The invoice was annotated as follows: "Bill adjusted to $50,000. Due Nov. 30, 1992."

8. The original invoice stated that the Committee owed $151,121 for the equipment and services provided. The invoice specifically itemized the cost for the equipment and services. The Committee and Respondent, through Stanton Kaye, decided to discount the bill to $50,000. Mr. Kaye is no longer an officer or employee of Respondent.

9. A corporation is prohibited from making a contribution or expenditure in connection with any federal election to any political office. 2 U.S.C. § 441b(a). It is unlawful for any candidate or political committee to accept or receive any contribution from a corporation. Id.

10. The provision of goods and services by a vendor for less than the usual and normal charge is a contribution. 11 C.F.R. § 100.7(a)(1)(iii). The usual and normal charge is the price of the goods in the market from which they normally would have been purchased at the time of the contribution. 11 C.F.R. § 100.7(a)(1)(iii)(B). The amount of the contribution is the difference between the usual and normal charge and the amount charged the Committee. 11 C.F.R. § 100.7(a)(1)(iii)(A).

11. A discount below the "usual and normal charge" is a contribution if the discount is not routinely offered in the vendor's ordinary course of business to nonpolitical clients. 11 C.F.R. § 100.7(a)(1)(iii).

12. Respondent, through prior management, made an in-kind contribution of $101,121 ($151,121 - $50,000) to the Committee as a result of the Committee's use of computer software and hardware at a discount below the usual and normal charge.

V. Respondent, through prior management, violated 2 U.S.C. § 441b(a) by making an in-kind contribution of $101,121 to the Committee.

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of Forty Thousand Dollars ($40,000) pursuant to U.S.C. § 437g(a)(5)(A).

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

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

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

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

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

12/21/95
Date

FOR THE RESPONDENT:

Stephen Tropp
General Counsel
Quarterdeck Corporation

November 21, 1995
Date

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FAXED 1/19/96

January 19, 1996

VIA FACSIMILE & FIRST CLASS MAIL
R. Brian Oxman
Oxman & Jaroscak
14126 East Rosecrans Boulevard
Santa Fe Springs, CA 90670

RE: MUR 3991
Chromosohm Media Inc.

Dear Mr. Oxman:

On November 29, 1995, you sent a response to the Federal Election Commission's reason to believe finding that Chromosohm Media Inc. ("Chromosohm") violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended. The response included a declaration from Joseph Sohm, president of Chromosohm, who states that he has attached a copy of the contract between Brown for President and Chromosohm.

The Office of General Counsel did not receive a copy of the contract. On January 11, 1996, I called your office, and left a message with your receptionist. This Office requests that you send a copy of the contract.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Abel P. Móntez

Abel P. Móntez
Attorney

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3991
Brown for President,	)	
Blaine Quick, as treasurer, and	)	**SENSITIVE**
Chromosohm Media Inc.	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On August 16, 1995, the Federal Election Commission ("the Commission") found reason to believe that Brown for President ("the Committee"), and Blaine Quick, as treasurer, violated 2 U.S.C. §§ 441a(f), 434(b)(8), and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and 11 C.F.R. §§ 9034.6 and 104.11. The Commission also found reason to believe that Drug, Hospital & Health Care Employees Union, Local 1199 ("the Union"), Quarterdeck Office Systems, Inc. ("Quarterdeck"), and Chromosohm Media, Inc. ("Chromosohm") each violated 2 U.S.C. § 441b(a).

On October 11, 1995, the Commission accepted a signed conciliation agreement and civil penalty submitted by the Union for making an in-kind contribution to the Committee. On December 15, 1995, the Commission also accepted a signed conciliation agreement and civil penalty submitted by Quarterdeck for making an in-kind contribution.

The remaining matters involve violations by Chromosohm and the Committee. The Office of General Counsel's recommends to the Commission that it take no further action with regard to the transaction involving Chromosohm. In addition, with respect to

the Committee on the remaining violations, this Office will be proceeding to the next stage of the enforcement process.

II. PROPOSED COURSE OF ACTION

A. No further action with regard to the transaction involving Chromosohm Media Inc.

Chromosohm, an incorporated commercial vendor, is a special events company located in Ojai, California. On February 6, 1992, Chromosohm produced a campaign event for the Committee. On February 10, 1992, in a letter on Chromosohm stationery, Joseph Sohm, billed the Committee $4,168.75 for the event for such items as production, audio visual expenses, audio recording session, equipment rental, equipment purchases, office expenses, and mailing expenses. The letter stated: "The estimated retail value of your event if I billed retail would be around $75,000. The video production was worth an additional $75,000, therefore the total value of the event was around $150,000. If we stay under $25,000 I think we will have done spectacularly." Attachment 1. On February 10, 1992, the Committee issued a check for $4,168.75 to Joseph Sohm.

Because the letter suggested that Chromosohm had provided media event services to the Committee at a discount, it appeared that Chromosohm made an in-kind contribution to the Committee.[2] Therefore, the Commission found reason to believe that the Committee and its treasurer, violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution of $145,831.25 as a result of Chromosohm's provision of media services worth $150,000 at a discount of $4,168.75. The Commission also found reason to

[2] During the audit, the Commission had requested that the Committee provide information on the transactions involving Joseph Sohm or Chromosohm. The committee was unresponsive during the audit.

believe that Chromosohm violated of 2 U.S.C. § 441b(a) by making the in-kind contribution of $145,831.25. For these violations, the proposed conciliation agreements provided for a civil penalty to be paid by each of the respondents.

In response to the Commission's reason to believe findings, counsel for the Committee and Chromosohm[3] provide two signed declarations from: (1) Joseph Sohm, the sole owner, director, and officer of the Chromosohm, and (2) Jodie Evans, the Committee's campaign manager. *See* Attachments 2-3.

In his signed declaration, Mr. Sohm states that he created and produced the multi-media show for a Committee fundraiser and that he initially estimated that the cost of the production process would be approximately $4,000. Attachment 2, at 1. Mr. Sohm explained that Jodie Evans, the Committee's campaign manager, informed him that she could not budget $4,000 for the event, and asked him if he could do the show for less by "cutting down" production to a budget of $2,500. *Id.* Mr. Sohm agreed and signed a contract with the Committee to produce the program within the $2,500 budget. *Id.*

At the conclusion of the event, Mr. Sohm sent the Committee an invoice for $4,168.75 and spoke to Ms. Evans about the fact he had billed for more than the agreed upon budget. *Id.* Because he believed the amount billed ($4,168.75) was closer to the amount he had originally calculated as the cost of the production ($4,000), he wrote the February 10, 1992 letter, which later formed the basis for the Commission's reason to believe finding. *Id.* at 2.

[3] The Committee and Chromosohm are represented by the same counsel: Brian Oxman of Oxman and Jaroscak.

Mr. Sohm contends: "The $150,000.00 to which I alluded [in the letter] was the sum total of the 'commercial value' of the production if I was able to resell it on the commercial market." *Id.* Mr. Sohm states: "This would include marketing the video tape and placing it in the video market distribution system where it would be sold at retail. However, there was no market for the video and it was never marketed for resale." *Id.* Mr. Sohm continues: "I believe [the video] could have generated $150,000.00 in sales, although I knew I would not be permitted to sell this one (1) time media event production. The $150,000.00 was the retail sale value, not the production cost value. The production cost value was $4,168.75, which is exactly what I billed the Brown for President Campaign." *Id.*

In a signed affidavit, Ms. Evans states that the reasonable value of the services rendered by Chromosohm was $2,500, the contractual amount. Attachment 3, at 2. Ms. Evans contends that the language contained in Mr. Sohm's February 10, 1992 letter was an attempt to justify his cost overrun of $1,668.75 and to receive more than the contractual amount. *Id.* at 3. Ms. Evans states that the contract was limited to $2,500 because she could not justify spending a greater amount on a fundraising event, designed to attract 850 people to raise approximately $35,000. *Id.* at 2. Ms. Evans states: "There is no logic to spend $150,000.00 on a program for an event that was designed to gross $35,000."[4] *Id.* at 3.

After receiving Chromosohm's invoice, Ms. Evans states that she expressed her displeasure with Mr. Sohm about the cost overrun. *Id.* at 2. Ms. Evans states: "Our

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[4] Ms. Evans notes that the Committee had a policy of receiving $100 contributions from individuals. Attachment 2, at 1.

contract with Mr. Sohm called for a $2,500.00 budget and for services to be rendered accordingly. We did not request any excessive services, nor did we receive any excessive in-kind contribution. . . ." *Id.* Ms. Evans continues: "Mr. Sohm claimed the estimated retail value of his participation in the [ ] event would be $75,000.00, and that his video production was worth an additional $75,000.00, for a total of $150,000.00. I found this claim incredible 'puffing' and no one would have paid $150,000.00 for a slide show presentation where the contract called for a $2,500.00 budget." *Id.* at 2-3. In order to settle the disputed debt, Ms. Evans said that she agreed to pay Mr. Sohm for the contractual price, plus the $1,668.75 cost overrun. *Id.* at 2.

Given the information provided in the declarations by Mr. Sohm and Ms. Evans, the Office of General Counsel believes that the Commission should accept the explanations offered by the Committee and Chromosohm. It appears from the evidence obtained that the $150,000 estimated value was puffery on the part of the vendor used in an attempt to recoup his costs, and that while the actual value of the product is not entirely clear, there is nothing in the documents, except for the letter from Mr. Sohm, produced which suggests the value was $150,000. Therefore, the Office of General Counsel recommends that the Commission take no further action with respect to the Committee and Chromosohm on this transaction.

B. Further action with regard to Brown for President's staff advances, acceptance of in-kind contributions, and reporting violations

With regard to the remaining violations, the Commission found reason to believe that the Committee and its treasurer violated 2 U.S.C. § 441a(f) by accepting $70,019.36 in excessive contributions from four individual staff members; 2 U.S.C. § 441b(a) by

accepting a $101,121 in-kind contribution from Quarterdeck and a $39,497.37 in-kind contribution from the Union; and 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11 by failing to report the debt owed to the Union during the time it was outstanding.

On August 28, 1995, the Commission notified the Committee, and its treasurer, that the Commission would enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Since that time, the Committee has been generally unresponsive to this Office's efforts to conciliate the matter. For example, this Office granted the Committee two extensions, totaling 45 days. After the times to respond had elapsed, this Office called the Committee's counsel numerous times to inquire about the status of the responses. Ordinarily, the Committee's counsel was unavailable and would not return the telephone calls. On November 30, 1995, counsel contacted the Commission to request documents in order to respond. On December 1, 1995, counsel provided this Office with a partial response consisting of two declarations from Ms. Evans to address issues involving the acceptance of the in-kind contributions from the Union and Quarterdeck. In this response, counsel referenced his November 30, 1995 document request. On December 20, 1995, this Office sent counsel the requested documents. On December 26, 1995, counsel received the documents; the response was due on January 5, 1996. On January

11, 1996, this Office left a message with his Office. To date, Counsel has failed to contact this Office, to submit a complete response, or to submit an offer to conciliate.

Because the Committee's actions to date do not suggest that it is willing to conciliate, the Office of General Counsel will proceed to the next stage of the enforcement process. *See* 11 C.F.R. § 111.18(d). In light of our contacts with Committee's counsel, this Office believes that pre-probable cause conciliation with the respondents would be futile. Accordingly, this Office is currently preparing a General Counsel's Brief on this matter, which will fully address the issues and address the Committee's December 1, 1995 partial response.

III. RECOMMENDATIONS

1. Take no further action against Brown for President and Blaine Quick, as its treasurer, for a violation of 2 U.S.C. § 441b(a) as it relates to Chromosohm Media, Inc.;

2. Take no further action against Chromosohm Media Inc., for a violation of 2 U.S.C. § 441b(a), and close the file with respect to Chromosohm Media, Inc.; and

3. Approve the appropriate letters.

4/1./96
Date

Lawrence M. Noble
General Counsel

Attachments

1. Letter from Chromosohm Media Inc. to Brown Committee, dated February 11, 1992
2. Declaration of Joseph Sohm, dated November 6, 1995
3. Declaration of Jodie Evans, dated November 30, 1995

Staff Assigned: Abel P. Móntez

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Brown for President,	)	MUR 3991
Blaine Quick, as treasurer, and	)	
Chromosohm Media Inc.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on April 17, 1996, the Commission decided by a vote of 5-0 to take the following actions in MUR 3991:

1. Take no further action against Brown for President and Blaine Quick, as its treasurer, for a violation of 2 U.S.C. § 441b(a) as it relates to Chromosohm Media, Inc.

2. Take no further action against Chromosohm Media Inc., for a violation of 2 U.S.C. § 441b(a), and close the file with respect to Chromosohm Media, Inc.

3. Approve the appropriate letters, as recommended in the General Counsel's Report dated April 11, 1996.

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

Attest:

4/18/96
Date

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

Received in the Secretariat: Thurs., April 11, 1996 4:17 p.m.
Circulated to the Commission: Fri., April 12, 1996 12:00 p.m.
Deadline for vote: Wed., April 17, 1996 4:00 p.m.

lrd

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 23, 1996

R. Brian Oxman
Oxman & Jaroscak
14126 East Rosecrans Boulevard
Santa Fe Spring, CA 90670

RE: MUR 3991
Chromosohm Media Inc.

Dear Mr. Oxman:

On August 16, 1995, Chromosohm Media Inc. ("Chromosohm") was notified that the Federal Election Commission ("the Commission") found reason to believe that Chromosohm violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended, by making an in kind contribution to Brown for President and Blaine Quick, as treasurer. On November 29, 1995, you submitted a response to the Commission's reason to believe finding concerning the Chromosohm transaction.

After considering the circumstances of the matter, the Commission determined on April 17, 1996 to take no further action against Chromosohm, and closed the file with respect to this transaction. 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) remain in effect with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

The Commission reminds your client that providing services at a discount below the usual and normal charge results in an in-kind contribution and a violation of 2 U.S.C. § 441b(a). Your client should take steps to ensure that this activity does not occur in the future.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Abel P. Móntez

Abel P. Móntez
Attorney

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 23, 1996

R. Brian Oxman
Oxman & Jaroscak
14126 East Rosecrans Boulevard
Santa Fe Spring, CA 90670

RE: MUR 3991 Brown for President and Blaine Quick, as treasurer

Dear Mr. Oxman:

On August 16, 1995, Brown for President and Blaine Quick, as treasurer, were notified that the Federal Election Commission ("the Commission") found reason to believe that they violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended, by accepting an in kind contribution from Chromosohm Media Inc. ("Chromosohm"). On November 29, 1995, you submitted a response to the Commission's reason to believe finding concerning the Chromosohm transaction.

After considering the circumstances of the matter, the Commission determined on April 17, 1996 to take no further action against Brown for President and Blaine Quick, as treasurer, for accepting an in-kind contribution from Chromosohm, and closed the file with respect to this transaction. 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) remain in effect with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

The Commission reminds your clients that accepting services at a discount below the usual and normal charge results in an in-kind contribution and a violation of 2 U.S.C. § 441b(a). Your clients should take steps to ensure that this activity does not occur in the future.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Abel P. Móntez

Abel P. Móntez
Attorney

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 10, 1996

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

SENSITIVE

R. Brian Oxman
Oxman & Jaroscak
14126 East Rosecrans Boulevard
Santa Fe Springs, CA 90670

RE: MUR 3991
Brown for President and
Blaine Quick, as treasurer

Dear Mr. Oxman:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, on August 16, 1995, the Federal Election Commission ("the Commission") found reason to believe that your clients violated 2 U.S.C. §§ 434(b)(8), 441a(f) and 441b(a), and 11 C.F.R. § 104.11. The Commission instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Abel Móntez, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Brief

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3991
Brown for President and Blaine	)	
Quick, as treasurer	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On August 16, 1995, the Federal Election Commission ("the Commission") found reason to believe that Brown for President ("the Committee") and Blaine Quick, as treasurer ("Respondents"), violated the following provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"): 2 U.S.C. § 441a(f) by accepting excessive contributions from four individual staff members; 2 U.S.C. § 441b(a) by accepting in-kind contributions from Quarterdeck Office Systems ("Quarterdeck") and Drug, Hospital & Health Care Employees Local 1199 ("the Union"); and 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11 by failing to report a debt owed to the Union during the time it was outstanding.

Respondents submitted a partial response to the Commission's reason to believe findings on December 1, 1995. The response includes declarations from their counsel and the Committee's campaign manager to address the in-kind contributions from Quarterdeck and the Union. For a portion of the in-kind contribution from the Union, respondents provided information that suggests that the Committee had no knowledge of the expenditures paid for by the Union. However, the response failed to provide evidence to prove that the Committee did not have knowledge of receiving the remaining in-kind contributions from the two entities. In addition, Respondents did

not dispute that they accepted excessive contributions from the four individual staff members. Therefore, this Office is prepared to recommend probable cause to believe that Respondents violated 2 U.S.C. §§ 441a(f), 441b(a), and 434(b)(8) and 11 C.F.R. § 104.11

II. A. EXCESSIVE CONTRIBUTIONS FROM STAFF MEMBERS

1. Applicable Law

Under the Federal Election Campaign Act of 1971, as amended ("the Act"), no person may make contributions to any candidate and his or her authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000. 2 U.S.C. § 441a(a)(1)(A). No candidate or political committee shall knowingly accept any contribution that exceeds the contribution limitations. 2 U.S.C. § 441a(f). Moreover, no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures. *Id.*

The payment by an individual from his or her personal funds for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of a political committee is a contribution. 11 C.F.R. § 116.5(b). However, two exemptions exist. First, an individual may spend an aggregate of $1,000 per election for personal transportation expenses on behalf of a candidate without counting such expenditures as contributions. 11 C.F.R. §§ 100.7(b)(8) and 116.5(b). Second, advances of personal funds will not be considered contributions if

they are for the individual's personal transportation expenses or 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. 11 C.F.R. § 116.5(b); *see also* Explanation and Justification for 11 C.F.R. § 116.5(b), 55 *Fed. Reg.* 26383 (June 27, 1989). If the individual's transportation and subsistence expenses are paid by personal credit card, they must be reimbursed within 60 days after the closing date of the billing statement on which the charge first appears, or if a personal credit card was not used, within 30 days after the date on which the expenses were incurred. *Id.* When an individual incurs expenses for the subsistence of others, a contribution occurs at the time the financial obligation is incurred, regardless of when the payment is due or when the individual pays the debt. 11 C.F.R. § 116.5; *see also* Explanation and Justification for 11 C.F.R. § 116.5(b), 55 *Fed. Reg.* 26382 (June 27, 1989).

2. Facts

Four staff members made excessive contributions to the Committee totaling $68,173.36. By December 3, 1992, the Committee had reimbursed these individuals for all of the expenses. The following chart includes the date of the expense, the range of expenses, the highest aggregate amount, and the date of the highest excessive amount:

NAME	DATES OF EXPENSES	RANGE	HIGHEST AGGREGATE AMOUNT[1]	DATE OF HIGHEST EXCESSIVE AMOUNT
Bourbeau, Linda	11/06/91 - 05/04/92	$14.50 - $4,075.26	$10,339.56	05/04/92
Bourbeau, Michael	10/21/91 - 06/16/92	$ 3.58 - $2,815.06	$12,172.13	03/21/92
Evans, Jodie	08/23/91 - 11/30/92	$ 4.75 - $5,008.20	$41,055.98	05/01/92
Klahn, Robert	03/02/92 - 08/10/92	$ 9.00 - $1,510.00	$ 4,605.69	05/24/92

Ms. Bourbeau made various advances for telephone calls, parking, automobile rentals, automobile rental accident, office supplies, printing, postage, and overnight mailings. Ms. Bourbeau submitted requests for reimbursements for advances made jointly by her and her husband. Mr. Bourbeau made various advances for office expenses, telephone calls, gas, tolls, postage, reception expenses, food, satellite fees, rental cars, and printing. Ms. Evans, the Committee's campaign manager, utilized seven different personal credit cards for campaign related expenses.[2] The majority of expenses charged to these accounts were for various campaign expenses, such as candidate's and others' campaign travel and subsistence, phone calls, facsimile charges, rentals, food for receptions, photocopies, postage, and supplies. Mr. Klahn made various advances for campaign expenses, such as overnight letter mailings, courier services, travel and subsistence of others, and telephone calls. Using his own personal credit card, Mr. Klahn also advanced money for his own travel and

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[1] The amounts for Linda Bourbeau, Michael Bourbeau and Jodie Evans were listed in the Committee's Final Audit Report as $10,372.56, $13,172.13 and $41,868.98, respectively. These amounts have reduced this amount by $33, $1,000 and $813, respectively, to account for the portion of the $1,000 personal travel exemption of 11 C.F.R. § 100.7(b)(8) that had not been previously applied.

[2] From September 2, 1991 to March 5, 1992, Ms. Evans was the Committee's treasurer; some of Ms. Evans' advance activity occurred during this time.

subsistence that was not reimbursed within 60 days. The expenses by Ms. Bourbeau, Mr. Bourbeau, Ms. Evans, and Mr. Klahn that were not related to the individuals own travel are contributions to the Committee. 11 C.F.R. § 116.5(b). Mr. Klahn's advances for his own travel that were not reimbursed within 60 days are contributions to the Committee. 11 C.F.R. § 116.5(b)(1). Therefore, the Commission found reason to believe that the Committee and its treasurer violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions from these individuals.

3. Committee's Response and Analysis

The Commission intended section 116.5 to provide for a limited exception to the general rules governing contributions for an individual's personal transportation expenses, and for the usual and normal subsistence expenses of an individual who is not a volunteer. 11 C.F.R. § 116.5, 55 *Fed. Reg.* 26382-3 (June 27, 1989). The Commission also adopted the section 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 (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.). Therefore, the Committee's failure to follow the rules for making staff

advances as prescribed in 11 C.F.R. § 116.5 resulted in the Committee receiving excessive contributions from the individuals.

Respondents did not dispute the Commission's reason to believe finding that the Committee received excessive contributions.[3] Therefore, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions totaling $68,173.36 from Linda Bourbeau, Michael C. Bourbeau, Jodie Evans, and Robert Klahn.

B. IN-KIND CONTRIBUTION FROM QUARTERDECK OFFICE SYSTEMS

1. Applicable Law

It is unlawful for any corporation to make a contribution or expenditure in connection with any federal election to any political office. 2 U.S.C. § 441b(a). It is also unlawful for any candidate or political committee to accept or receive any contribution from a corporation. *Id.* The provision of goods and services by a vendor for less than the usual and normal charge is a contribution. 11 C.F.R. § 100.7(a)(1)(iii). The usual and normal charge is the price of the goods in the market from which they normally would have been purchased at the time of the contribution. 11 C.F.R. § 100.7(a)(1)(iii)(B). The amount of the contribution is the difference between the usual and normal charge and the amount charged the Committee. 11 C.F.R. § 100.7(a)(1)(iii)(A).

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[3] On November 30, 1995, Committee's counsel requested documents from the Commission in order to respond to this finding. On December 20, 1995, the Commission provided these documents. However, the Committee's counsel failed to respond to this finding.

2. Facts

Prior to the campaign, Quarterdeck Office Systems ("Quarterdeck"), an incorporated commercial vendor, had aged and used computer software and hardware in storage. In a July 21, 1993 letter submitted during the Commission's audit, a Quarterdeck official, Stanton Kaye, stated that he and Ms. Evans discussed the Committee's computer needs. According to Mr. Kaye, he told Ms. Evans that although Quarterdeck was not in the business of leasing computer equipment, Quarterdeck would allow the Committee to use the computers that were in storage.

According to Mr. Kaye, he turned the matter over to his staff, who verbally agreed that nothing would be done until it was decided whether the Committee was going to purchase or rent the computers from Quarterdeck. Mr. Kaye stated that Quarterdeck provided the computers to the Committee during the campaign. However, according to Mr. Kaye, the parties had discussions for several months before deciding that the Committee would lease the computers for the amount that was comparable to the old computers' loss of value and pay for service time.

The exact date that the Committee acquired the computers is unknown. However, on November 17, 1992, Quarterdeck issued an invoice for $151,121 that itemized the equipment and services provided to the Committee. On December 1, 1992, the Committee issued a check in the amount of $50,000 to Quarterdeck for miscellaneous computer software and hardware. The November 17, 1992 invoice was attached to the check and an annotation that the bill was adjusted to $50,000, pursuant to Mr. Kaye's request. After the Committee issued the $50,000 check on December 1, 1992, Quarterdeck provided the Committee with a December 4, 1992 invoice showing that the amount due was $50,000. In his July 21, 1993 letter, Mr. Kaye acknowledged that because Quarterdeck did not normally lease computers, the Committee was not billed in the normal course of

business. However, he stated, that the Committee paid the bill soon after it was presented with the bill.

Quarterdeck made an in-kind contribution to the Committee of $101,121 ($151,121 - $50,000), which represents the difference between the original invoice and the reduced amount for computer equipment and services provided by Quarterdeck. 11 C.F.R. § 100.7(a)(1)(iii) (a discount below the "usual and normal charge" is a contribution if the discount is not routinely offered in the vendor's ordinary course of business to nonpolitical clients). *See* AO 1978-45. Therefore, the Commission found reason to believe that the Committee and its treasurer violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution of $101,121 ($151,121-$50,000).

3. Committee's Response

In response to the Commission's reason to believe finding, Respondents argue that they did not receive a discount nor an in-kind contribution from Quarterdeck because the parties had agreed initially that the Committee would lease the computers for $50,000. Respondents provided a declaration from Ms. Evans, who states that the lease was valued at approximately $50,000 for use of computer equipment through the convention in July 1992.

Ms. Evans states that after contacting several computer companies she decided to lease Quarterdeck's computers because Quarterdeck's quote was reasonable and the computers were more compatible with the Committee's needs. Ms. Evans maintains that she made no specific agreement with Mr. Kaye concerning when the bill would be submitted by Quarterdeck, but expected Quarterdeck to bill the Committee in accordance with industry standards. Ms. Evans states that when the Committee received the November 17, 1992 invoice for $151,121, she realized that the bill was three times the amount of Mr. Kaye's earlier quote. Ms. Evans states that she called Mr. Kaye to complain that she could have purchased the computers for less

than $150,000 and to inform him that the parties had earlier agreed on the $50,000 lease.

Ms. Evans states that Mr. Kaye had the impression that the parties had not previously decided whether the Committee would purchase or lease the computers. Ms. Evans states that she disagreed with Mr. Kaye, who later also questioned the $151,121 invoice and apologized for the confusion. Ms. Evans states that Mr. Kaye agreed that Quarterdeck would abide by its original quote of $50,000. Ms. Evans maintains that there was no discount involved in this transaction and that the $50,000 represented the reasonable value of the computers.

In his declaration, dated November 30, 1995, Respondents' counsel R. Brian Oxman states that he retained the services of the president of another computer company to assist in evaluating the 1992 market and industry standards for the Quarterdeck lease. According to Mr. Oxman, the computer company president was unwilling to provide a final expert opinion on this matter until he could review the Quarterdeck invoice. Mr. Oxman requested that the Office of General Counsel provide him with a copy of the invoice. Although this Office complied with Mr. Oxman's request on December 20, 1995, Respondents did not submit additional information on the 1992 computer market or the value of the particular computers at issue.

4. Analysis

There is probable cause to believe that the Committee's use of the computer equipment obtained from Quarterdeck resulted in a prohibited contribution to the Committee. The original invoice from Quarterdeck shows that the normal and usual charge for the computer equipment was $151,121. Each component of the computer equipment made available to the Committee was specifically itemized on the invoice. The second invoice does not itemize the computer equipment, but it shows a total price of $50,000. There is no indication from either invoice that the computer

equipment would be provided to the Committee at below the normal and usual charge of $151,121 for its use of the computers. 11 C.F.R. § 100.7(a)(1)(iii)(A). However, the Committee only paid $50,000 to Quarterdeck for its use of the computers. Thus, the Committee received a $101,121 ($151,121 - $50,000) contribution from Quarterdeck.

Respondents' argument that the Committee did not receive a discount nor an in-kind contribution from Quarterdeck because the computers were valued at $50,000 and leased from Quarterdeck is not supported by the record in this matter. The original invoice itemized the cost of each piece of equipment and service for a total invoiced amount of $151,121. Quarterdeck has acknowledged that the computers were worth $151,121 as reflected on the initial invoice. Although respondents' counsel states that a computer expert would offer his opinion on the value of the computers, respondents failed to provide any information that the value of the computers was $50,000. Moreover, Ms. Evans statement that Quarterdeck initially agreed that the Committee would lease the computers is contradicted by Mr. Kaye's July 21, 1993 letter. The letter states directly that the parties initially decided to wait until a later date to determine whether the Committee would lease or purchase the computers. However, there is no indication that the Committee did in fact lease the equipment and that the lease was valued at $50,000.

Therefore, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution of $101,121 ($151,121 - $50,000) from Quarterdeck Office Systems as a result of the

Committee's purchase of computer software and hardware at a discount below the usual and normal charge.

C. IN-KIND CONTRIBUTIONS FROM DRUG, HOSPITAL & HEALTH CARE EMPLOYEES UNION, LOCAL 1199 AND FAILURE TO REPORT DEBT

1. Applicable Law

A "contribution or expenditure" includes "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value" to any candidate or campaign committee in connection with a federal election. 2 U.S.C. § 441b(b)(2); *see also* 11 C.F.R. § 114.1(a)(1). The Act provides that it is unlawful for any labor organization to make a contribution or expenditure in connection with any federal election. 2 U.S.C. § 441b(a). Furthermore, candidates and political committees may not knowingly accept or receive such prohibited contributions. *Id.* However, the Commission's regulations provide a "safe harbor" for political committees and labor organizations, if a person (other than an official, member and employee of the labor organization) uses labor organization facilities for activity in connection with a federal election. 11 C.F.R. § 114.9(d). The definition of "person" includes any committee. *See* 11 C.F.R. § 100.10. Nevertheless, the person is required to reimburse the labor organization within a commercially reasonable time in the amount of the normal and usual rental charge for the use of the facilities. 11 C.F.R. 114.9(d).

The Act requires political committees to report the amount and nature of outstanding debts and obligations owed by or to such political committees. 2 U.S.C.

§ 434(b)(8); *see also* 11 C.F.R. § 104.11. The Commission's regulations also provide that if the exact amount of a debt or obligation is not known, the report shall state that the amount reported is an estimate. 11 C.F.R. § 104.11(b). Once the exact amount is determined, the political committee shall either amend the report containing the estimate or indicate the correct amount on the report for the reporting period in which such amount is determined. *Id. Cf. Federal Election Commission v. American Federation of State, County and Municipal Employees,* Civil Action No. 88-3208 (D.D.C. Oct. 31, 1991) (Committee is required to report in-kind contributions when they are made).

2. Facts

To facilitate its participation in the New York primary, held on April 7, 1993, the Committee used the facilities of the Drug, Hospital & Health Care Employees Local 1199 ("the Union"). In a written statement to the Audit Division, the Committee's campaign manager stated that the Committee used the Union's facilities because the Committee had a sudden need for meeting rooms and banquet facilities for the New York primary. The Union billed the Committee for these services. The Union also billed the Committee for items that are not characterized as the use of facilities, but were incurred by the Union on behalf of the Committee. These items include: food and refreshments, printing, advertising, staff compensation, and other miscellaneous items. The expenses for these items were incurred from March 30, 1992 to April 10, 1992. According to an October 12, 1992 letter written by a Union official, the parties had a conversation on October 9, 1992 concerning

amounts owed by the Committee and a request for payment. The Union submitted an invoice to the Committee, with a letter dated October 28, 1992, requesting payment. The invoice included both types of expenses: (1) $18,198.60 for the use of the Union's facilities[4] and (2) $39,497.37 in expenses paid to various vendors by the Union on behalf of the Committee.[5] This invoice detailed the expenses incurred by the Union on behalf of the Committee. A day earlier, on October 27, 1992, the Committee issued a check in the amount of $57,196 to the Union.

The Committee's failure to pay the Union for six months for the use of its facilities resulted in the Union making an $18,198.60 in-kind contribution to the Committee. The Committee failed to report the debt owed to the Union during the time it was outstanding. The Union made a $39,497.37 in-kind contribution to the Committee by providing goods and services not associated with the use of the Union's facilities. Therefore, the Commission found reason to believe that the Committee and its treasurer violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution of $39,497.37 from the Union. In addition, the Commission found reason to believe that the Committee and its treasurer violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11 by failing to report the debt owed to the Union during the time it was outstanding.

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[4] The Union billed the Committee: $11,650 for printing at its print shop, $5,925 for the rent for the Union's rooms and auditorium, and $623.60 for long distance telephone charges.

[5] These expenditures include the following: WSKQ Radio Spots, $2,150; 1199 Per Diem, $1,446.14; Ardeon Realty Staff O/T, $1,482.01; American Presort $442.85; Hobb Electrical Supply, $230.49; Ryder Truck Rental, $703.63; Cash-Victory Party, $2,488.10; Manhattan Ford NY, $254.81; Rental Truck Parking, $104.50; Food/Refreshments, $11,853.65; Toy Balloons, $860.59; Prompt Signs, $899.56; Milford Plaza Hotel, $500; Philmark Lithographics, $7,685.75; Adirondack Rents, $4,995.72; and Ace Audio Visual Co., $3,399.57.

3. Committee's Response

In their response to the findings of reason to believe, Respondents explain that because the Committee did not authorize the use of the Union's facilities or the expenditures by the Union, it did not knowingly accept or receive an in-kind contribution. Respondents provided a declaration from Ms. Evans, who states that the expenditures made by the Union were not authorized or requested by the Committee. Ms. Evans maintains that neither she nor the Committee had any notice or knowledge that the Union was making these expenditures or providing their facilities during the New York primary. Ms. Evans contends that the Union's president, Mr. Rivera, made the expenditures without advance authorization from the Committee, in violation of the rules established by the Committee.

Ms. Evans maintains that she first became aware of the Union's expenditures and the provision by the Union of its facilities a few weeks prior to receiving the Union's invoice. Ms. Evans states that Mr. Rivera acknowledged that the Union failed to submit a timely invoice to the Committee because missing records and misplaced invoices prevented the Union for knowing how much was owed. Ms. Evans states that she told Mr. Rivera to submit an invoice immediately and instructed him to provide her with an estimate. Ms Evans states that Mr. Rivera provided an estimated invoice in October 1992. Ms. Evans states that she complained to Mr. Rivera that the Committee had not authorized any of the expenditures. Ms. Evans states that Mr. Rivera told her that he would review the estimate. Ms. Evans stated that in an October 27, 1992 telephone conversation with Mr. Rivera, she was made

aware that the Committee owed the Union $57,156. Ms. Evans stated that she then issued a check for the amount on October 27, 1992 and delivered it to the Union.

4. Analysis

There is probable cause to believe that the Committee received a prohibited contribution of $18,198.60 from the Union as a result of the Committee's use of the Union's facilities. The Committee knew that the Union was providing the use of its facilities. In fact, the Committee's treasurer actually requested that the Union provide these facilities for the New York primary. The Committee used the Union's print shop, rooms, auditorium, and long distance telephone service. The Commission's regulations require the Committee to reimburse the Union within a commercially reasonable time. 11 C.F.R. § 114.9(d). However, the Committee did not reimburse the Union until six months later. In light of the fact that the Committee explicitly requested that the Union allow it to use the facilities, it was not commercially reasonable for the Committee to wait six months before it reimbursed the Union.[6]

Respondents argue that the Committee did not knowingly accept an $18,198.60 in-kind contribution associated with the use of the Union's facilities because the Committee had no knowledge that the Union was providing facilities during the 1992 New York primary. However, this argument is contradicted by Ms. Evans' May 24, 1993 letter submitted to the Audit Division during the audit suggesting that the Committee knew that the Union was providing its facilities for use by the Committee during the New York primary. This letter not only suggests that the Committee was

[6] Even if the Union misplaced its records and did not bill the Committee, this does not abrogate the Committee's responsibility to satisfy the outstanding bill.

aware that it was using the Committee's facilities, but it also indicates that the Committee initiated the transaction with the Union. Although the Committee may not have known the exact cost of the use of the Union's facilities, the Committee was required to estimate the amount of the debt and report it as such. 11 C.F.R. § 104.11(b).

In contrast, Respondents' claims that the Committee did not authorize the $39,497.37 in expenditures paid by the Union to vendors on behalf of the Committee and that the Committee lacked full knowledge that the expenditures were being made on its behalf are plausible. There is no evidence to suggest that the Committee authorized these expenditures, for such thing as radio spots and signs, during the New York primary. According to written statements submitted by Ms. Evans, the Committee did not have any knowledge that these expenditures had been made because the Union had failed to ask for authorization from the Committee and to submit a timely invoice.

Therefore, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 441b(a) by accepting an $18,198.60 in-kind contribution from the Union because they failed to reimburse the Union for six months for the use of its facilities, and violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11 by failing to report the $18,198.60 debt owed to the Union during the time it was outstanding. In addition, the Office of General Counsel is also prepared to recommend that the Commission find no probable cause to believe that Brown for

President and Blaine Quick, as treasurer, violated 2 U.S.C. § 441(b)(1) by accepting an in-kind contribution of $39,497.37 from the Union.

III. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find probable cause to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. 441a(f) by accepting excessive contributions totaling $68,173.36 from Robert Klahn, Linda Bourbeau, Michael C. Bourbeau, and Jodie Evans;

2. Find probable cause to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution of $101,121 from Quarterdeck Office Systems;

3. Find probable cause to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 441b(a) by accepting an $18,198.60 in-kind contribution from the Drug, Hospital & Health Care Employees Local 1199;

4. Find probable cause to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11 by failing to report an $18,198.60 in-kind contribution from the Drug, Hospital & Health Care Employees Local 1199 during the time it was outstanding; and

5. Find no probable cause to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 441b(a) by accepting a $39,497.37 in-kind contribution from the Drug, Hospital & Health Care Employees Local 1199.

10/9/96
Date

Lawrence M. Noble
General Counsel

LAW OFFICES OF
OXMAN & JAROSCAK
14126 EAST ROSECRANS BOULEVARD
SANTA FE SPRINGS, CALIFORNIA 90670

TEL: (310) 921-8068
FAX: (310) 921-2299

TO:	Mr. Abel Montez Federal Election Comm.	FAX. NO:	(202) 219-1043
DATE:	October 29, 1996	TIME:	7:00 p.m. PDST
RE:	MUR 3991 Brown for President	PAGES:	1

Dear Mr. Montez:

We have received the correspondence from Mr. Noble concerning MUR 3991, Brown for President, and Blaine Quick as Treasurer. We request an extension of 20 days to respond to the issues surrounding Quarterdeck Office Systems and the Drug, Hospital & Health Care Employees Local 1199. Mr. Oxman has been in trial out of state and is not scheduled to return until November 12, 1996.

If you have any questions, please contact us.

Thank you for your assistance.

Very truly yours,

Maureen Jaroscak

MPJ:ma

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 31, 1996

VIA FACSIMILE & FIRST CLASS MAIL
Maureen Jaroscak
Oxman & Jaroscak
14126 East Rosecrans Boulevard
Santa Fe Springs, CA 90670

RE: MUR 3991
Brown for President and Blaine Quick
as treasurer

Dear Ms. Jaroscak:

This is in response to your letter dated and received October 29, 1996, requesting a 20-day extension to respond to the General Counsel's Brief for Brown for President and Blaine Quick, as treasurer. After considering the circumstances presented in your letter, the Office of General Counsel has granted R. Brian Oxman a 20-day extension. Accordingly, his response is due by the close of business on November 20, 1996.

If you have any questions, please contact me or Lorenzo Holloway at (202) 219-3690.

Sincerely,

Abel P. Móntez
Attorney

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3991
Brown for President and Blaine	)	
Quick, as treasurer	)	

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On August 16, 1995, the Federal Election Commission (the "Commission") found reason to believe that Brown for President (the "Committee") and Blaine Quick, as treasurer ("Respondents"), violated the following provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"): 2 U.S.C. § 441a(f) by accepting excessive contributions from four individual staff members; 2 U.S.C. § 441b(a) by accepting in-kind contributions from Quarterdeck Office Systems ("Quarterdeck") and Drug, Hospital & Health Care Employees Local 1199 ("the Union"); and 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11 by failing to report a debt owed to the Union during the time it was outstanding. On October 10, 1996, the Respondents were provided with the General Counsel's Brief in this matter which is incorporated herein by reference.

II. DISCUSSION

The Respondents did not respond to the General Counsel's Brief.[1] For the reasons set forth in the General Counsel's Brief in this matter, this Office recommends that the Commission find probable cause to believe that the Committee, and its treasurer violated 2

[1] This Office granted the Respondents two extensions of time, totaling 30 days. The Respondents' response was due on December 2, 1996.

U.S.C. §§ 441a(f), 441b(a), 434(b)(8) and 11 C.F.R. § 104.11. In addition, for the reasons set forth in the General Counsel's Brief, this Office recommends that the Commission find no probable cause that the Committee and its treasurer violated 2 U.S.C. § 441b(a).

In light of the recent decisions in *FEC v. Williams*, No. 95-55320 (9th Cir. Dec. 26, 1996) and *FEC v. National Republican Senatorial Committee*, 877 F. Supp. 15 (D.D.C. 1995), concerning the application of a five-year statute of limitations to enforcement actions, this Office notes that a significant portion of the activity occurred less than five years ago.[3] *See* 5 U.S.C. § 2462. This Office anticipates that these matters will be resolved before the statute of limitations runs for the majority of the activity involved in these matters. Because of the severity of the violations still at issue in this matter, the Office of General Counsel believes that it is appropriate to find probable cause against the Committee and to attempt to conciliate this matter.

[3] The in-kind contributions of $101,121 from Quarterdeck Office Systems to the Committee occurred on December 1, 1992. Other activity occurred earlier. An in-kind contribution of $18,198 from the Drug, Hospital and Health Care Employees Union occurred on April 7, 1992. Staff advances totaling $68,173 from four Committee staff members also occurred between March 1992 through December 1992. Specifically, Robert Klahn made various advances from April 1992 to August 1992, and on March 24, 1992, his excessive advance reached its highest balance, at $4,605.69. Michael Bourbeau made an excessive contribution of $12,172.13 on March 21, 1992. Linda Bourbeau made an excessive contribution of $10,339.56 on May 4, 1992. Finally, Jodie Evans, the campaign manager, made an excessive contribution of $41,055.98 on May 1, 1992. These staff advance figures reflect the highest outstanding excessive contribution amounts resulting from these individuals' advances, consistent with the Commission's approach to other staff advance issues arising from the audits of 1992 presidential committees. *See, e.g.*, MUR 3789 (Agran for President).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

IV. RECOMMENDATIONS

1. Find probable cause to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. 441a(f) by accepting excessive contributions totaling $68,173.36 from Robert Klahn, Linda Bourbeau, Michael C. Bourbeau, and Jodie Evans;

2. Find probable cause to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution of $101,121 from Quarterdeck Office Systems;

3. Find probable cause to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 441b(a) by accepting an $18,198.60 in-kind contribution from the Drug, Hospital & Health Care Employees Local 1199;

4. Find probable cause to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11 by failing to report an $18,198.60 in-kind contribution from the Drug, Hospital & Health Care Employees Local 1199 during the time it was outstanding; and

5. Find no probable cause to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 441b(a) by accepting a $39,497.37 in-kind contribution from the Drug, Hospital & Health Care Employees Local 1199.

6. Approve the attached conciliation agreement; and

7. Approve the appropriate letter.

2/5/97
Date

Lawrence M. Noble
General Counsel

Attachments
1. Conciliation Agreement

Staff Assigned: Jane Whang

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Brown for President and Blaine Quick, as treasurer.	)	MUR 3991
	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 11, 1997, the Commission decided by a vote of 5-0 to take the following actions in MUR 3991:

1. Find probable cause to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions totaling $68,173.36 from Robert Klahn, Linda Bourbeau, Michael C. Bourbeau, and Jodie Evans.

2. Find probable cause to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 441b(a) by accepting an in-kind contribution of $101,121 from Quarterdeck Office Systems.

3. Find probable cause to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 441b(a) by accepting an $18,198.60 in-kind contribution from the Drug, Hospital & Health Care Employees Local 1199.

4. Find probable cause to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11 by failing to report an $18,198.60 in-kind contribution from the Drug, Hospital & Health Care Employees Local 1199 during the time it was outstanding.

(continued)

5. Find no probable cause to believe that Brown for President and Blaine Quick, as treasurer, violated 2 U.S.C. § 441b(a) by accepting a $39,497.37 in-kind contribution from the Drug, Hospital & Health Care Employees Local 1199.

6. Approve the conciliation agreement, as recommended in the General Counsel's Report dated February 5, 1997.

7. Approve the appropriate letter, as recommended in the General Counsel's Report dated February 5, 1997.

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

Attest:

2-12-97
Date

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

Received in the Secretariat: Wed., Feb. 05, 1997 4:15 p.m.
Circulated to the Commission: Thurs., Feb. 06, 1997 11:00 a.m.
Deadline for vote: Tues., Feb. 11, 1997 4:00 p.m.

bjr

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 19, 1997

R. Brian Oxman
Oxman and Jaroscak
14126 East Rosecrans Boulevard
Sante Fe Springs, CA 90610

RE: MUR 3991
Brown for President and
Blaine Quick, as treasurer

Dear Mr. Oxman:

On February 11, 1997, the Federal Election Commission ("Commission") found there is no probable cause to believe that your clients, the Brown for President Committee ("Committee") and Blaine Quick, as treasurer, violated 2 U.S.C. § 441b(a) by accepting a $39,497.37 in-kind contribution from the Drug, Hospital & Health Care Employees Local 1199. Accordingly, the file in this matter has been closed as it pertains to this specific transaction.

In addition, on that day, the Commission found that there is probable cause to believe the Committee and Blaine Quick, as treasurer, violated the following provisions of the Federal Election Campaign Act of 1971, as amended: 2 U.S.C. § 441a(f) by accepting excessive contributions totaling $68,173.36 from four individuals; 2 U.S.C. § 441b(a) by accepting prohibited in-kind contributions totaling $101,121 from Quarterdeck Office Systems, and $18,198.60 from the Drug, Hospital & Health Care Employees Local 1199; and 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11 by failing to report the $18,198.60 debt during the time it was outstanding.

The Commission has a duty to attempt to correct such violations for a period of at least 30 days and no more than 90 days by informal methods of conference, conciliation, and persuasion, and by entering into a conciliation agreement with a respondent. If we are unable to reach an agreement after 30 days, the Commission may institute a civil suit in United States District Court and seek payment of a civil penalty.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission within ten days. I will then recommend that the

Commission accept the agreement. Please make the check for the civil penalty payable to the Federal Election Commission.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter has been closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

If you have any questions or suggestions for changes in the enclosed conciliation agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Jane Whang, the attorney assigned to this matter at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 11, 1997

Via Facsimile and First Class Mail

R. Brian Oxman
Oxman and Jaroscak
14126 East Rosecrans Boulevard
Sante Fe Springs, CA 90610

RE: MUR 3991
Brown for President and
Blaine Quick, as treasurer

Dear Mr. Oxman:

By letter dated February 19, 1997, this Office notified you that the Federal Election Commission ("Commission") found probable cause to believe that your clients, the Brown for President Committee ("Committee") and Blaine Quick, as treasurer, violated provisions of the Federal Election Campaign Act of 1971, as amended. Also enclosed with that letter was a conciliation agreement that the Commission approved in settlement of this matter.

On February 27, 1997, I contacted your offices and spoke with Maureen Jaroscak, your partner, regarding this matter. She told me that she or you would return my call to let me know whether your clients were interested in conciliating this matter; however, to date I have not heard from either of you. On March 10, 1997, I once more called your offices and left a message, to which I have yet to receive a response.

This letter reminds you that the mandatory 30-day period for conciliation will be ending on March 25, 1997. If prior to that time I have not received any indications from you that your clients are interested in conciliating this matter, this Office may recommend that the Commission authorize a civil action for relief. If, however, your clients are interested in conciliation, please contact me as soon as possible at (202) 219-3690.

Sincerely,

Jane J. Whang
Attorney

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3991
Brown for President and	)	
Blaine Quick, as treasurer	)	

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On February 11, 1997, the Federal Election Commission (the "Commission") found probable cause to believe that Brown for President and Blaine Quick, as treasurer (collectively referred to as "Respondents" or the "Committee"), violated 2 U.S.C. §§ 441a(f), 441b(a) and 434(b)(8) and 11 C.F.R. § 104.11. These violations, which arose out of Governor Edmund G. Brown Jr.'s 1992 Presidential campaign, concern the Committee's acceptance of both excessive contributions from four individual staff members and prohibited contributions from a corporation, Quarterdeck Office Systems, Inc. ("Quarterdeck"), as well as a labor union, the Drug, Hospital & Health Care Employees Local 1199 ("Union"). In addition, Respondents failed to report a debt owed to the Union while that debt was outstanding.

On the same date, the Commission also approved a proposed conciliation agreement

On February 19, 1997, counsel for Respondents were notified of the Commission's findings and provided with the Commission's conciliation proposal.

II. DISCUSSION

To date, Respondents have not responded to the Commission's conciliation agreement. Under the Federal Election Campaign Act of 1971, as amended (the "Act"), the Commission must, after finding probable cause to believe that a violation occurred, attempt for a period of at least 30 days, but not more than 90 days to resolve the violation through informal methods of conference, conciliation and persuasion. 2 U.S.C. § 437g(a)(4)(A)(i). Should these efforts be unsuccessful, then the Commission may institute a civil action for relief. 2 U.S.C. § 437g(A)(6)(a). Although further efforts may be taken to attempt to resolve this matter through conciliation, 2 U.S.C. § 437g(a)(4)(A)(i), this Office believes that doing so would be an inefficient use of the Commission's resources. Counsel for Respondents has steadfastly ignored this Office's attempts to resolve this matter through the conciliation process.[1] Therefore, the Commission could file suit against Respondents. However, in evaluating this case, this Office believes that the Commission should take no further action and close the file in this matter.

At this time, the only activity in this matter that is clearly within the five year statute of limitations at 24 U.S.C. § 2462 concerns the Committee's acceptance of an in-kind contribution from Quarterdeck in violation of 2 U.S.C. § 441b.[2] The available information

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[1] For example, on February 27, 1997, this Office contacted Maureen Jaroscak, one of the Committee's counsel, who said she would contact this Office to discuss the matter after she reviewed the conciliation agreement. However, she did not contact this Office. On March 10, 1997, this Office again attempted to contact counsel for the Committee. However, even after leaving a message on the firm's voice mail, counsel did not attempt to contact this Office. This Office also sent letters to the Committee's counsel on March 11, 1997 and March 19, 1997, to remind them of the impending 30 day deadline for post-probable cause conciliation negotiations. However, counsel for the Committee did not respond to either letter.

[2] In contrast, the in-kind contributions that the Committee received from the Union, which represented fundraising expenses that the union paid on behalf of the Committee, occurred between March 30, 1992 and April 10, 1992. Similarly, the excessive contributions that the Committee received in the form of staff advances from four staff members reached their highest points between March 1992 and May 1992, a period of time that, in part, falls outside the five year statute of limitations.

shows that Quarterdeck permitted the Committee to use computer equipment in connection with Governor Brown's campaign. Quarterdeck invoiced the Committee $151,121, on November 17, 1992, yet the Committee only paid Quarterdeck $50,000. Thereafter, on December 4, 1992, Quarterdeck submitted a revised invoice to the Committee, showing that the cost for using the computer equipment was only $50,000. Unlike the initial November 17, 1992 invoice, which contained an itemization of the cost for each piece of computer equipment used by the Committee, the December 4, 1992 invoice only included a total charge of $50,000, which corresponded exactly with the Committee's payment. Therefore, there was probable cause to believe that Quarterdeck's acceptance of the Committee's $50,000 payment on December 1, 1992, as payment in full, resulted in an in-kind contribution in the amount of $101,121.

Although there is sufficient evidence to support the Commission's probable-cause-to-believe finding that the Committee violated Section 441b in connection with the use of Quarterdeck's computer equipment, this Office believes that additional evidence is needed to establish a prima facie case in federal district court that the Committee violated 2 U.S.C. § 441b(a). It is the party asserting the claim that bears the burden of persuasion and, in a civil action, the plaintiff must establish his or her claim by a preponderance of the evidence. *See* Fed.R.Evid. 301. *See, e.g., Keeler Brass Company v. Continental Brass Company* 862 F.2d 1063 (4thCir. 1988) (in the usual civil case the plaintiff has the burden to persuade the trier of fact that the existence of the proposition to be proved is more probably true than not true).

Although it appears that the Committee received an in-kind contribution from Quarterdeck, it remains to be determined exactly what the usual and normal charge for

Quarterdeck's computer equipment should have been. Under the Commission's regulations, the provision of goods or services at less than the usual and normal charge is a contribution and, in the case of goods, the Commission's regulations define usual and normal charge to mean the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution. 11 C.F.R. § 100.7(a)(1)(iii). In order to prevail in litigation, the Commission would have to prove by a preponderance of the evidence that the amount paid to Quarterdeck was not the usual and normal charge for the use of the computer equipment in question. *See* Fed.R.Evid. 301. This would require the Commission to reconstruct the usual and normal charge for computer equipment that was used in 1992. Given the time that has elapsed since this activity occurred, the additional evidence needed to establish the usual and normal charge for the computer equipment in question may not be readily available.

Aside from these factors, it has come to this Office's attention that the Committee was inadvertently permitted to terminate approximately eight months ago. 11 C.F.R. § 102.4 (administrative termination of committees).[3] Thus, with the Committee no longer in existence, any civil action instituted by the Commission would most likely be directed against the Committee's treasurer and possibly the candidate. Although the Act imposes certain responsibilities on a committee treasurer as well as a candidate, who, in this case, signed a candidate agreement promising to pay any civil penalty imposed against the Committee, 11 C.F.R. § 9033.1(b)(11), there is no evidence to show that either the

[3] The Committee requested to terminate at the time that it submitted the 1996 July Quarterly Report. Normally, termination requests from committees that are Respondents in enforcement matters are denied. However, in this case, due to administrative oversight, the Committee was inadvertently informed that they could terminate in July 1996 and the error was not discovered until April 1997, some eight months later.

Committee treasurer or Governor Brown were involved in arranging the use of Quarterdeck's computer equipment. Thus, pursuing these individuals, after allowing the Committee to terminate, could be problematic during a civil suit.

In conclusion, this Office recognizes that the $101,121 in-kind contribution from Quarterdeck is relatively significant when compared to other enforcement cases. However, given the age of this matter as well as the burden of proof required in a civil cause of action, this Office believes that the most effective use of the Commission's resources would be to take no further action against the Committee and its treasurer and close the file in this matter.[4]

III. RECOMMENDATIONS

1. Take no further action and close the file.

2. Approve the appropriate letters.

4/30/97
Date

Lawrence M. Noble
General Counsel

Staff Assigned: Craig D. Reffner

[4] The Commission accepted a conciliation agreement from Quarterdeck that provided for a $40,000 civil penalty and closed the file with respect to this Respondent on December 15, 1995. The Commission also accepted a conciliation agreement from the Union that provided for a $14,000 civil penalty and closed the file with respect to this Respondent on October 11, 1995.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Brown for President and Blaine Quick, as treasurer.	)	MUR 3991
	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on May 6, 1997, the Commission decided by a vote of 5-0 to take the following actions in MUR 3991:

1. Take no further action and close the file.

2. Approve the appropriate letters, as recommended in the General Counsel's Report dated April 30, 1997.

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

Attest:

5-7-97
Date

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

Received in the Secretariat: Wed., April 30, 1997 4:20 p.m.
Circulated to the Commission: Thurs., May 01, 1997 11:00 a.m.
Deadline for vote: Tues., May 06, 1997 4:00 p.m.

bjr

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 20, 1997

R. Brian Oxman
Oxman & Jaroscak
14126 East Rosecrans Boulevard
Santa Fe Springs, CA 90670

RE: MUR 3991
Brown for President and
Blaine Quick, as treasurer

Dear Mr. Oxman:

As you are aware, on February 11, 1997, the Federal Election Commission found probable cause to believe that your clients, Brown for President and Blaine Quick, as treasurer, (collectively referred to as the "Committee") violated 2 U.S.C.§§ 441b(a), 434(b)(8), provisions of the Federal Election Campaign Act of 1971, as amended. In addition, the Commission found probable cause to believe that the Committee violated 11 C.F.R. § 104.11, a provision of the Commission's regulations. After considering the circumstances of this matter, however, the Commission, on May 6, 1997, determined to take no further action against your clients and closed its file in this matter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Craig Reffner
Attorney

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 20, 1997

Lawrence Scherer, Esq.
Meyer, Suozzi, English & Klein
One Commerce Plaza
Suite 1810
Albany, NY 12260

RE: MUR 3991
Drug, Hospital & Health Care
Employees Union, Local 1199

Dear Mr. Scherer:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Zina E. Hoes

Zina E. Hoes
Paralegal Specialist

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 20, 1997

Ronald B. Turovsky, Esq.
Manatt, Phelps & Phillips
11355 West Olympic Blvd.
Los Angeles, CA 90064-1613

RE: MUR 3991
Quarterdeck Office Systems, Inc.

Dear Mr. Turovsky:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Zina E. Hoes
Paralegal Specialist

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 20, 1997

R. Brian Oxman
Oxman & Jaroscak
14126 East Rosecrans Boulevard
Santa Fe Springs, CA 90670

RE: MUR 3991
Chromosohm Media, Inc.

Dear Mr. Oxman:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Zina E. Hoes
Paralegal Specialist

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 20, 1997

Robert Klahn
355 N. Cantana #396
Camarillo, CA 93010

RE: MUR 3991
Robert Klahn

Dear Mr. Klahn:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Zina E. Hoes
Paralegal Specialist

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 20, 1997

Michael C. Bourbeau
145 Otis Street
Hingham, MA 02043

RE: MUR 3991
Michael C. Bourbeau

Dear Mr. Bourbeau:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Zina E. Hoes

Zina E. Hoes
Paralegal Specialist

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 20, 1997

Jodie Evans
643 E. Channel Road
Santa Monica, CA 90402

RE: MUR 3991
Jodie Evans

Dear Ms. Evans:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Zina E. Hoes

Zina E. Hoes
Paralegal Specialist

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 20, 1997

Linda Bourbeau
145 Otis Street
Hingham, MA 02043

RE: MUR 3991
Linda Bourbeau

Dear Ms. Bourbeau:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Zina E. Hoes
Paralegal Specialist

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3991

DATE FILMED 7-1-97 CAMERA NO. 2

CAMERAMAN JMD