FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4208

DATE FILMED 4-1-97 CAMERA NO. 4

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 4, 1995

MUR 4208

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. [illegible]
STAFF DIRECTOR

FROM: ROBERT J. [illegible]
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: MATTERS FROM THE FINAL AUDIT REPORT ON BENNETT FOR [illegible]

Attached are [illegible] sections of the final audit report on Bennett for Senate [illegible] for referral to your office for consideration in the [illegible] process. The items included are:

Finding II.B. Prohibited Contributions This finding deals with [illegible] relating to the Candidate's relationship with [illegible]. Three are being referred and originally had five parts. Franklin Quest Co. [illegible] Candidate's Consulting Fees from Repurchase Agreement, Fee Advance, and Corporate Stock remaining two parts [illegible] guarantee a Bank Loan. The Spouse and Friend of Bank Loan by Candidate's were resolved. [illegible] Contribution Used to Repay Bank Loan, report. [illegible] response to the interim audit

Finding [illegible]. [illegible] Excessive Contributions These contributions [illegible] refunded by [illegible] individuals and have been refunds were via [illegible] noted that the majority of the of delivery [illegible] check which provides no evidence

Finding [illegible] Excessive Contributions from Staff Advances [illegible] only one individual, the campaign manager, was $22,000. [illegible] advance at it highest point

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 4, 1995

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

MUR 4208

SUBJECT: MATTERS REFERRED FROM THE FINAL AUDIT REPORT ON BENNETT FOR SENATE

Attached are those sections of the final audit report on Bennett for Senate that merit referral to your office for consideration in the compliance process. The items included are:

Finding II.B. Apparent Prohibited Contributions This finding deals with issues relating to the Candidate's relationship with Franklin Quest and originally had five parts. Three are being referred, Candidate's Consulting Fees from Franklin Quest Co., Consulting Fee Advance, and Corporate Stock Repurchase Agreement Used to Guarantee a Bank Loan. The remaining two parts, Guarantee of Bank Loan by Candidate's Spouse and Franklin Quest Distribution Used to Repay Bank Loan, were resolved in the Committee's response to the interim audit report.

Finding II.D. Apparent Excessive Contributions These contributions were received from individuals and have been refunded by the Committee. It is noted that the majority of the refunds were made via cashier's check which provides no evidence of delivery or negotiation.

Finding II.E. Apparent Excessive Contributions from Staff Advances This finding involves only one individual, the campaign manager. The amount of the advance at it highest point was $22,000.

Finding II.F. Contributions Subject to 48 Hour Disclosure Notices The majority of the dollar value of the contributions discussed in this finding were from the Candidate. Six contributions totaling $600,000 out of a total of $649,001. The Committee did, however, file the required notices on some of the Candidate's other contributions.

Should you have any questions please contact Joe Stoltz.

Attachments as stated.

B. Apparent Prohibited Contributions

Sections 110.10(a) and (b) of Title 11 of the Code of Federal Regulations state, in part, that candidates for Federal office may make unlimited expenditures from personal funds.

For purposes of this section, personal funds means any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either legal and rightful title; an equitable interest; salary and other earned income from bona fide employment; dividends and proceeds from the sale of candidate's stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy of which the candidate is the beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; proceeds from lotteries and similar legal games of chance.

Sections 441b(a) and (b)(2) of Title 2 of the United States Code state, in part, that it is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office.

For purposes of this section, the term "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election.

Section 441a(a)(1)(A) of Title 2 of the United States Code states that 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.

Section 100.7(a)(1) of Title 11 of the Code of Federal Regulations, states in relevant part that the term loan includes a guarantee, endorsement, and any other form of security.

A loan which exceeds the contribution limitations of 2 U.S.C. 441(a) and 11 CFR part 110 shall be unlawful whether or not it is repaid. A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid.

Further, a loan is a contribution by each endorser or guarantor. Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement. However, a candidate may obtain a loan on which his or her spouse's signature is required when jointly owned assets are used as collateral or security for the loan. The spouse shall

not be considered a contributor to the candidate's campaign if the value of the candidate's share of the property used as collateral equals or exceeds the amount of the loan which was used in the candidate's campaign.

Background

The Candidate contributed/loaned the campaign a total of $3,001,121. As a result, the auditors made an inquiry concerning the Candidate's financial status. This inquiry was also prompted by an October 1991 personal financial statement which shows the Candidate's net worth at $8,622,000 of which only $17,000 was liquid. The majority of the Candidate's assets were in "Non-Marketable Restricted Securities", $8,000,000. The explanatory note on the financial statement explains that this represents 20,044 shares of Franklin International Institute, Inc.1/ (Franklin) at $400 per share. The Candidate's contributions revolve around this stock and the Candidate's involvement in this corporation.

According to a June 2, 1992 stock prospectus, Franklin was incorporated in December of 1983. From September 1987 through June 2, 1992 Franklin operated as a Subchapter S Corporation. After that date Franklin discontinued its Subchapter S status and at the same time offered stock for public sale. The associated stock prospectus notes that "[h]istorically, the Company has never declared or paid any cash dividends on the Common Stock other than distributions made to shareholders to cover their individual liability for payment of income taxes occurring as a result of the Company's status as an S Corporation or in connection with the capitalization of affiliated companies."2/ According to the prospectus as of May 26, 1992 Franklin had 29 stockholders. The Candidate owned 11.37% of Franklin's stock on June 2, 1992.

Also according to the June 2, 1992 stock prospectus, "Robert F. Bennett has been a director of the Company since October 1984, and served as Chairman of the Board from December 1984 to December 1986." "From November 1990 to April 1991, Mr. Bennett was Vice Chairman of the Company. Mr. Bennett was President of the Company from October 1984 to January 1991 and served as Chief Executive Officer of the Company from December 1986 to April 1991." According to a June 23, 1993, stock prospectus Senator Bennett remained on the Board of Directors and was on the Compensation Committee. His then current term was due to expire at the 1993 annual meeting.

1/ In April of 1992 Franklin International Institute, Inc. changed its name to Franklin Quest,Inc.

2/ Similar statements are included in a second prospectus dated June 23, 1993.

Candidate's Consulting Fees from Franklin Quest Co.

Senator Bennett left Franklin and established a consulting firm. In response to an inquiry about the circumstances surrounding Senator Bennett's departure from Franklin, the Committee states that "The Senator left Franklin to pursue consulting opportunities, with new clients and former clients of Franklin Quest." Also the General Counsel of Franklin provided an affidavit that states:

> "In or about April 1991, Franklin and Mr. Bennett began developing a business plan for starting up a new division of Franklin to be known as the 'Franklin Consulting Group.' In April 1991, Mr. Bennett resigned his offices of Vice Chairman and Chief Executive Officer consistent with his decision to create and lead the consulting group.
>
> "The Franklin Consulting Group was to be an independent profit center for Franklin and was to be led by Mr. Bennett for the purpose of providing 'value-added' consulting to the corporate accounts and customers of Franklin, as well as providing consulting services to Franklin.
>
> "On further analysis by Franklin and Mr. Bennett, it became apparent that the activities of any internal consulting group would create an unacceptable level of liability for Franklin.
>
> "Accordingly, Mr. Bennett and Franklin agreed that an 'outside' consulting group would be formed by Mr. Bennett, which consulting group would provide consulting services to Franklin as well as other clients.
>
> "R. F. Bennett Associates, Inc., a Utah corporation with Mr. Bennett as its sole shareholder, was formed for the purposes originally conceived by Franklin and Mr. Bennett. Additionally, Franklin understood that Mr. Bennett would, in his discretion, be at liberty to conduct consulting activities with parties other than Franklin and/or its customers and clients.
>
> "Through R. F. Bennett Associates, Inc., Franklin continued to retain the business expertise and consulting services of Mr. Bennett."

Included in the materials submitted is a copy of an agreement between Franklin and Senator Bennett, dated July 1, 1991 but unsigned3/. The agreement states in part:

3/ According to Franklin's General Counsel neither this agreement nor any follow-up agreement was signed by either Franklin or Senator Bennett, but the unsigned agreement

"We have attempted to reflect in our decisions and conclusions the deep affection we have for you while reaching such conclusions as we have deemed necessary and appropriate to protect both parties to this transaction, eliminate any ambiguity or misunderstandings with respect to the future and facilitate a smooth transition into the next phase of our relationship."

"We initially announced to the world that Bob Bennett would be forming 'Franklin Consulting Group', which would be an affiliated company of Franklin International Institute, Inc. Subsequently, however, the structure, organization and ownership of that entity has evolved to the point that Franklin will have no ownership, control, direction or management of the new entity. Consequently, the new consulting firm should not use the Franklin name or logo. We are aware that you have already procured stationary and business cards reflecting the name 'Franklin Consulting Group.' All such business cards and stationary should be discarded. We strongly recommend that you name your new company 'Bennett Consulting Group' or 'Robert F. Bennett and Associates, Consultants' or such other title that incorporates your name."

The agreement does not specify the financial arrangement between the consulting firm and Franklin. The stock prospectus notes that a retainer of $43,750 per month was paid starting in July of 1991 and ending in June of 1992. The consulting agreement states that in consideration of the retainer, "Bennett Consulting agrees to be available, on an as-needed basis, at times mutually acceptable to both parties, to consult with senior management of Franklin. You have agreed to provide certain specific consulting services as outlined in your June 25, 1991, memorandum."

The agreement goes on to provide for Senator Bennett to use Franklin staff to service third party clients on a reimbursable basis and contrary to provisions of a stock "Buy/Sell Agreement"4/, not to require that Senator Bennett sell his stock

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(Footnote 3 continued from previous page)
accurately reflects the terms of the agreement which both parties duly performed.

4/ Corporations may place restrictions on the transferability of stock under Utah law in order to maintain the the corporation's status when it is dependent on the number or

in Franklin "given the fact that you have technically ceased being an employee of Franklin." Finally, Franklin was "desirous of being quite liberal" in allowing Senator Bennett to take copies of any Franklin files he felt would assist him in his business.

The Committee provided a copy of the June 25, 1991 memorandum referenced in the unsigned agreement. That memorandum states that a portion of the budget of the Franklin Consulting Group would be translated into a retainer to be paid monthly. The memorandum lays out a number of projects to be undertaken for Franklin as follows:

- Opening new consulting opportunities with Franklin's knowledge and approval.

- A complete market survey and feasibility study of the retail market for Franklin products to include possibilities, costs, difficulties and timetables, with no actions taken without Franklin's direction.

- Consulting with Franklin officers and employees as asked.

- A rewriting of the 'control book', to make it more usable in the Stress Seminar Kit.

- An examination of various new product possibilities.

- Such other assignments as are given from time to time.

(Footnote 4 continued from previous page)
identity of its share holders; to preserve entitlements, benefits, or exemptions under federal, state, or local law; or, for any other reasonable purpose. Such restrictions may require a shareholder to offer stock first to the corporation or other persons; may require the corporation or other persons to acquire the stock; may require the corporation or other persons to approve the stock transfer; may prohibit the transfer of stock to designated persons or groups of persons; or, may include other restrictions (Utah Code Ann. §16-10a-627(1993)). Franklin was at the time of the loan a Subchapter S corporation and was therefore limited to 35 shareholders all of who were required to be individuals, estates, or certain trusts (26 U.S.C. §1361(b)). Generally, a Buy-and-Sell Agreement compels a shareholder to sell his shares to the corporation or to the other shareholders at the price stated in the agreement. It also obligates the corporation or the other shareholders to buy the selling shareholder's shares at that price. Business Law and the Regulatory Environment; Irwin; Homewood, Illinois; Sixth Edition 1986.

Also, the memorandum notes that Senator Bennett would remain on the Franklin Board and would continue his duties with Franklin's Japanese subsidiary until a designee was selected. Finally, Senator Bennett notes that he had located office space and would be prepared to vacate his space as of July 1, 1991.

No information is available to establish which, if any, of the projects discussed in the June 25, 1991 memorandum were accomplished and what if any other projects were undertaken.

A review of the R. F. Bennett Associates records revealed that the consulting firm apparently had no other paying clients. The consulting firm's bank account was opened on July 17, 1991, little more than seven weeks before the Committee account5/, with the first consulting payment. Thereafter there were only five deposits that were not Franklin consulting payments. All of these deposits were transfers from Senator Bennett's personal account..

The consulting firm's disbursement records indicated that, other than the Candidate, the firm had only one regular employee. In addition, one other individual received three monthly payments of $1,500 each. It is also noted that in April of 1992, the Senator's personal tax liabilities were apparently paid from the consulting firm's account.

A review of the records available for the Candidate indicated that for the latter part of 1991 and until the sale of some of his Franklin stock in June of 1992 the majority of the Candidate's income came either from Franklin in the form of earnings distributions to cover his tax liability for his share of the corporation's income, or the consulting firm which in turn received its revenue from Franklin in the form of consulting payments.

During the fall of 1991 and January of 1992 there is a direct correlation between consulting payments to the consulting firm and some of the Candidate's contributions/loans to the campaign. Of the $38,000 contributed by the Candidate in 1991 $35,000 came directly from the consulting firm account which was at the time funded by the consulting payments. The consulting firm was incorporated on January 8, 1992 and after that date funds were transferred to the Candidate and his spouse's joint checking account and then to the campaign. As discussed below,

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5/ The Committee filed FEC Forms 1 and 2 dated September 30, 1991, and opened its bank account with a deposit on September 6, 1991.

on January 30, 1992 funds from the consulting payment advance were deposited into the consulting firm's account, transferred to the Candidate and his spouse's personal account, and again transferred to the campaign.6/

In the Interim Audit Report it was stated that, in the opinion of the Audit staff, the following factors demonstrated that the consulting payments from Franklin may not constitute "salary and other earnings from bonafide employment" as required by 11 CFR 110.10 (b)(2) to be considered personal funds of the Candidate and are therefore prohibited corporate contributions to the Candidate's campaign from Franklin:

(1) The timing of the Candidate's departure from Franklin, the creation of the consulting firm and the beginning of the campaign;

(2) the apparently less than arms length nature of the agreement between the consulting firm and Franklin, including the original intent that the consulting firm be a division of Franklin; the lack of employees and clients of the consulting firm; the Candidate's lack of other income during the early part of the campaign; a statement by the Treasurer that he believed that the consulting contract was part of a "golden parachute" that the Candidate got upon his departure from Franklin;

(3) the Candidate's continued presence on the Franklin Board of Directors;

(4) the lack of information concerning the Candidate's departure from Franklin after such a long, and according to the stock prospectus, successful relationship with the company.

6/ Contributions and loans totaling nearly $1.1 million were drawn on this joint account. Utah law provides that a joint account belongs to "the parties in proportion to the net contributions by each to the sums on deposit" Utah Code Ann. § 75-6-103(1) (1993). This is the presumed basis of ownership unless there is clear and convincing evidence of a different intent. Id. At this time, there is no evidence that the Candidate and his spouse intended to divide the assets of this joint account by any manner other than the net contributions method. An analysis of deposits into this account shows that with minor exception, the funds deposited were those of the Candidate. Therefore, pursuant to the net contributions method of dividing the ownership of the account, none of the contributions are attributed to Joyce M. Bennett.

The Interim Audit Report recommendation with respect to the consulting payments asked the Committee to provide documentation and explanations that establish that the consulting retainer paid to R. F. Bennett Associates, Inc. represent salary or other earned income from bona fide employment and was independent of Senator Bennett's candidacy. This documentation was to include:

- An explanation of the circumstances surrounding Senator Bennett's departure from Franklin;
- Lists of other clients of R. F. Bennett Associates, Inc. during the period July 1991 to December 1992;
- Information concerning attempts to obtain other clients;
- Descriptions of similar contracts that Franklin entered into with other consultants to include an explanation of the work to be performed;
- Descriptions of work performed by R. F. Bennett Associates, Inc. for Franklin including which of the projects listed in the June 25, 1991 memorandum were undertaken, as well as any other projects undertaken, the approximate number of hours devoted to each and copies of any reports or memoranda produced; and
- Any other information that the Committee believes is relevant to establishing that the contract and retainer represented compensation in consideration of services, the amount of the compensation did not exceed the amount that would be paid to a similarly qualified person, and the employment was genuinely independent of the candidacy (See Advisory Opinion 1979-74).

The Response provides some additional background on Franklin and Senator Bennett's departure. The Committee explains that Senator Bennett and four other individuals co-founded Franklin in 1984 and that under Senator Bennett's leadership Franklin grew from a start up company to a company with $104 million in sales in 1991. The Committee also notes that by 1991 Franklin was considering various expansion options and going public.

The Committee goes on to explain that:

"This dramatic growth in seven short years created management tensions -- a common business occurrence -- that were noticeable in the company as early as 1989 and which came to a head in late 1990. In July 1989, Arlen Crouch was hired as Franklin's Chief Operating Officer and Executive Vice President. Mr. Crouch was experienced in taking private companies public and Franklin needed Mr. Crouch's expertise because Franklin was considering that option. Several of the company's founders began to leave

the company (Richard Winwood, for example, left in 1990) or to take on less management responsibilities within the company as the value of their stock increased to the millions of dollars."

The Committee explains that Senator Bennett and Mr. Crouch did not always agree on various aspects of the Franklin's management and future, and that by late 1990 it was mutually agreed that Mr. Crouch should direct Franklin's affairs. According to the Committee's response, management control was amicably passed to Mr. Crouch in January of 1991.

The Response also explains the chain of events surrounding the creation of R.F. Bennett Associates, Inc. The explanation mirrors the earlier explanation described above but adds that it was anticipated that for the first year Franklin would consume the majority of the consulting firm's time. Redacted copies of the minutes of Franklin board meetings and a press release were provided in support of the explanation. No additional information is provided concerning the decision to have the consulting firm operate as an independent company rather than a division of Franklin.

With respect to Senator Bennett's departure from Franklin to establish the R.F. Bennett and Associates, Inc., the Committee states:

> "Mr. Bennett's departure was a major event at Franklin, for Mr. Bennett was an original founder of the company and former President and Chief Executive Officer for seven years. Although he would remain, and to this day remains, on the Board of Directors, Franklin wanted to ensure his availability to consult on important corporate matters, especially since he had such a through knowledge of the company. At the same time, Franklin wanted to ensure that Mr. Bennett would not compete directly with the company in his new consulting endeavors. Franklin also wanted to compensate Mr. Bennett for seven years of successful leadership and management. Accordingly, Franklin retained Mr. Bennett to consult with the company on an as-needed basis from July 1991 to June 1992."

With respect to the amount of the consulting fee ($43,750 per month), the Committee states that sum was determined by adding Senator Bennett and his secretary's annual salaries, the associated taxes and benefits, Senator Bennett's car allowance, and figures for yearly rent, office supplies and telephone. To this total was added Senator Bennett's estimated bonus due for 1991. This total was then divided by 12 to reach the monthly consulting fee. The estimated 1991 bonus amount accounted for more than 50% of the total.

The Committee goes on to state that "Franklin's agreement with Mr. Bennett was consistent with Franklin's standing corporate policy in dealing with every company founder and other key employees who have departed active employment at the company -- both before and after Mr. Bennett. This kind of arrangement is common, if not standard, throughout corporate America, and thus Franklin did not hesitate to disclose its consulting arrangements with Mr. Winwood and Mr. Bennett in its June 2, 1992 Prospectus..." The Committee provides the names and copies of agreements for three other individuals as examples.

With respect to services provided to Franklin under the consulting agreement the Committee states that:

> "In the months following Mr. Bennett's departure, Franklin's officers indeed called upon Mr. Bennett's expertise and counsel many times for important management decisions. For example, in the Fall of 1991, Mr. Bennett was very involved in assessing the company's options regarding going public or remaining a private company. He met with representatives of an investment company and evaluated their proposals for investing in Franklin. He presented their proposals to Franklin management and made important recommendations to management regarding its decision to go public and its options to adopt an Employee Stock Ownership Plan or be acquired. Once Franklin decided to go public, Mr. Bennett often consulted with Franklin officers regarding management decisions ranging from the important, such as investment options targeted by Franklin, to the mundane, such as management tensions and intra-company relationships. Mr. Bennett spent considerable time assisting with operations in Japan and helping Franklin with a troublesome licensee in that country. He assisted in winding down the Franklin Learning division. He also worked on new curriculum with Franklin's research and development team in a consulting capacity. Franklin deemed all of these services as essential consulting services in fulfillment of Mr. Bennett's consulting agreement and more"

The Committee represents that Franklin required less from other departing officers than was required from Senator Bennett.

The Committee explains that Senator Bennett pursued other clients independent of the consulting agreement with Franklin. Two are mentioned in particular, one being Senator Bennett's accountant and the other being a bank. However, the bank is also mentioned as a potential client in the June 25, 1991 memorandum discussed above and would appear to predate the establishment of R.F. Bennett and Associates, Inc. The Committee states that after he became a Senate candidate, Senator Bennett decided not to pursue these relationships.

With respect to work performed under the consulting contract, the Committee lists a number of items that appear to fall under the heading " Consulting with Franklin officers and employees as asked" in the June 25, 1991 memorandum. The Committee also notes work with Franklin's operation in Japan that is also mentioned in the June 25, 1991 memorandum. It appears that the other specific projects enumerated in the memorandum were not undertaken. The documentation of the hours devoted and copies of work products requested in the Interim Audit Report are not provided.

The copies of contracts with other departing Franklin executives are varied in their provisions. The first provides for a $32,000 per month payment for 60 months. No mention is made of any annual bonus in the contract. Rather, a sum is paid for writing services to be performed over the life of the contract to include curricula and book manuscripts, a sum is paid for general consulting, a sum is paid for the settlement of propriety interests in Franklin tangible and intangible products, and the largest single sum is paid for a 10 year non competition agreement. This contract was signed by all parties in September of 1990 and, according to the 1993 stock prospectus, terminated with a $300,000 lump sum payment in April of 1992.

The second example submitted calls for the payment of $100,000 over 12 months and 75% of the discretionary bonus to be paid at the time when all such bonuses were paid. The 1993 stock prospectus refers to this agreement as a severance payment. No mention is made of any services to be provided in return for the payments. The documentation provided is in the form of a signed letter from Franklin's President. No agreement signed by the recipient is included.

The third example, dated May 17, 1994, provides for $100,000 to be paid over one year and 50% of the annual discretionary bonus. The agreement states that the individual "agreed to remain employed as a consultant and merger/acquisition specialist, with responsibility to assist the Executive Committee in reviewing and processing potential acquisitions." Further, the agreement includes a three year non-disclosure and non-competition clause. The agreement is signed by both the employee and Franklin's General Counsel.

The Committee concludes by stating that "[t]he bottom line is that the consulting payments served legitimate corporate purposes and were consistent with Franklin's standing policy of retaining the counsel of company founders and key officers after their departure." It is also noted that the consulting arrangement was part of Senator Bennett's evolving separation from Franklin and that "[t]hese business events and arrangements

were totally unconnected to the 1992 campaign for Utah Senator, a seat which was not open until May 28, 1991, when former Senator Jake Garn unexpectedly announced his intention not to seek reelection."

The Committee's Response provides additional background on Senator Bennett's departure from Franklin, but does not provide any supporting documentation. Documentation is provided that establishes that the consulting business was originally intended to be a division of Franklin and that it was subsequently determined that a separate entity was preferred. The Response confirms that R.F. Bennett and Associates had no clients other than Franklin. Two potential clients are mentioned, a bank that according to the documentation had been contacted while the consulting operation was still part of Franklin and Senator Bennett's accountant. The Committee suggests that others were contacted but provides no specifics or documentation. When the Senator Bennett became a candidate shortly after establishing the consulting firm none of these prospects were pursued.

The examples of other agreements provided are significantly different than the contract with R.F. Bennett and Associates. None provide for the payment of the full discretionary bonus, and the two that mention the bonus pay it at the time other recipients are paid. Two of the three contain non-competition clauses while Senator Bennett's does not. The third is described as a severance payment. One of the contracts includes a significant sum for the purchase of the individuals proprietary interests in Franklin's products unlike the agreement with Senator Bennett. All of the agreements submitted with the Committee's response are signed by a Franklin representative and, except for the agreement described as "severance" in the 1993 stock prospectus, each is signed by the recipient as well. None of the documents surrounding the agreement with Senator Bennett are signed by either party. Finally, although the Committee states that Senator Bennett's departure from Franklin was not related to his candidacy, but rather the opposite, it is noted that the Committee states that former Senator Garn announced his intention not to seek reelection on May 28, 1991[7]. Senator Bennett's memorandum outlining the services to be provided came nearly a month later. The unsigned agreement is dated July 1, 1991 and notes that Senator Bennett was prepared to leave Franklin on that day.

The Committee's Response has not established that the consulting retainer paid to R.F. Bennett Associates represents salary or other earned income from bona fide employment and was independent of Senator Bennett's candidacy.

7/ Franklin's June, 1993 stock prospectus notes that former Senator Garn joined Franklin's Board of Director's in January of 1993.

Consulting Fee Advance

Also related to the consulting agreement with Franklin is a deposit into the consulting firm bank account on January 30, 1992. The regular deposit of $43,750 was made on January 21st. The deposit on the 30th was in the amount of $131,250 or 3 x $43,750. This apparently represents a three-month advance on the consulting retainer from Franklin given that the next $43,750 deposit does not occur until three and a half months later. On the same day of the deposit, January 30, 1992, a $90,000 check was written from the consulting firm account to the Candidate's personal account. Also on this date, the Candidate wrote an $80,000 check to the campaign from his personal account. Thus, it appears that the advance was used, in part, to fund the campaign and constitutes a prohibited advance from Franklin within the meaning of 2 U.S.C. 441b(b)(2). In a response to an inquiry about this transaction the Committee states that "[t]he advance of $131,250 which represented one quarter of consulting fees was advanced to Robert Bennett because the stock offering was delayed from January until June. Since it was delayed, both parties agreed to pay the consulting agreement in quarterly installments rather than monthly installments."

The Interim Audit Report recommended that the Committee demonstrate that the consulting fee advance did not constitute, in part, a prohibited contribution. The Committee was asked to provide any written agreements with respect to the advance, and explanations of the circumstances surrounding the advance from both the Candidate and Franklin.

In its Response, the Committee argues that the payment of $131,250 represented funds that the Candidate had earned up to that point. The Committee contends that the entire 1991 annual bonus of approximately $275,000 had been earned by year end 1991 along with seven months of consulting fees. The total of these was approximately the amount that was paid up to and including the $131,250 payment on January 30, 1992. The Committee goes on to state that the consulting agreement permitted the lump sum payment and that Franklin could have paid the entire amount as severance in July of 1991. Finally the Committee points to another agreement that was settled for a lump sum payment and concludes that the $131,250 payment "was paid in the ordinary course of Franklin's business, was driven by financial and business events completely independent of Mr. Bennett's candidacy, was consistent with Franklin's prior business dealings with consultants, and simply made him whole on bonus payments and consulting fees he had already earned."

The Committee's Response is flawed in a number of respects. First, although the unsigned consulting agreement does not prohibit the advance payment, neither does it envision it. The agreement simply states that "Franklin agrees to pay Bennett

Consulting a retainer in the amount of $_____ per month for a period of one year commencing July 1, 1991, and ending June 30, 1992." Nothing in the agreement contemplates an advance payment. Second, the contention that the entire amount could have been paid as a severance payment may be accurate, however, the agreement reached did not call for a lump sum payment. Though the agreement is unsigned, the flow of payments up until January 30, 1992, indicates that at least with respect to the payments, it was being followed. Third, assuming that the agreement as submitted is accurate, the Candidate had not "earned" the full amount of the bonus at January 30, 1992. The amount of the bonus and other fees were to be paid monthly regardless of the derivation of the amount. Fourth, the other consulting agreement cited by the Committee that was settled for a lump sum payment was not equivalent to the situation with Senator Bennett. That contract is discussed in the Franklin stock prospectus. According to the prospectus if the contract had run to the end of its 5 year term, Franklin would have expended approximately $1.3 million. The $300,000 lump sum payment appears to have saved Franklin $1 million over the remaining life of the contract. In the Candidate's case, at the end of the 3 months covered by the advance, Franklin resumed the monthly payments. Finally the Committee has not demonstrated any "financial and business events" that make the advance advantageous to Franklin.

Corporate Stock Repurchase Agreement Used to Guarantee a Bank Loan

The Candidate obtained a $385,000 line of credit at the First National Bank of Layton in his name. This line of credit was used by the Candidate (apparently to repay a personal obligation to Franklin) and by the campaign. It appears that Franklin was a guarantor on this loan. The Committee made 9 draws totaling $200,221.

The stock prospectus discloses that "[i]n connection with bank loans obtained by Messrs. Robert F. Bennett ($385,000), Robert G. Pederson ($150,000) and Gregory L. Fullerton ($60,000) in February 1992, the Company agreed, in the event of default, to redeem part or all of the shares of the Company's Common Stock pledged by each borrower as collateral for the loans at the then fair market value of the shares. No such default has occurred. Messrs. Bennett, Pederson and Fullerton pledged 554,400, 45,000 and 86,400 shares respectively."8/

8/ In comparing the number of shares owned versus the number pledged, it must be considered that in April of 1992 the Board of Directors of Franklin approved a 90 to 1 stock split. The number of shares discussed in the stock prospectus gives retroactive effect to the split.

A letter from Franklin's Chief Operating Officer, Arlen B. Crouch, to Layton Bank describes the repurchase agreement. The agreement states that:

> "Franklin agrees that in the event of any borrower's default in any loan obligation to the Bank that is secured by Franklin stock, Franklin will honor the Bank's request to redeem part or all of the pledged stock at the stock's then current fair market value as determined by generally accepted closely held corporation valuation principles, applying such reasonable discounts, including the minority shareholder discount and the lack of marketability discount, as appropriate or at the public market price (if applicable), but not less than $500 per share.
>
> The foregoing commitment is conditioned on the Bank's securing from each borrower an agreement to allow the Bank to convey and transfer to Franklin all right, title and interest in and to the stock purchased by Franklin pursuant to the terms of this letter. This latter provision must be made part of the loan agreement with each borrower such that each borrower consents to the termination and transfer of his interest in the stock upon the Bank's exercise of its right to have the stock redeemed under the terms of this letter."

The Interim Audit Report noted that the repurchase agreement was apparently necessary due to the lack of the marketability of the pledged stock, Franklin's Subchapter S status, and the Buy-and_Sell Agreement associated with Senator Bennett's stock (Footnote 4 above). As a Subchapter S Corporation, Franklin was limited to 35 stockholders all of which are required to be either individuals, estates or certain trusts (26 U.S.C. §1361(b)). Therefore, it appears that the use of the stock as collateral for the loan, absent the repurchase agreement, may have violated the terms of the Subchapter S election and the Buy-and-Sell Agreement. Also, the prospectus states several times that, prior to the public offering in June of 1992, there had been no public market for the stock. This conforms to the notes to the October 1991 personal financial statement regarding the method of valuation of the stock.

Therefore, the Interim Audit Report concluded that the repurchase agreement constitutes a loan guarantee by Franklin and, as such, a prohibited contribution from a corporation in the amount of the campaign draws on the line of credit, $200,221.

The Interim Audit Report recommendation asked the Committee to demonstrate that the stock repurchase agreement provided by Franklin in connection to the line of credit did not constitute a contribution by Franklin in the amount of the Committee's draws on the line of credit totaling $200,221. The Committee was also asked to provide information and documentation showing the terms of the Buy-and-Sell Agreement associated with the Candidate's stock at the time of the loan and any other restrictions on the transfer of the stock; documentation generated or relied on by the First National Bank of Layton, Franklin, or the Candidate in evaluating the stock used as collateral for the line of credit and how that documentation was used; and, correspondence and other documentation between Franklin and the Candidate generated in preparation of the agreement, particularly documentation indicating whether the Candidate compensated Franklin for its action on behalf of the Candidate.

The Committee's Response explains that when Franklin was preparing to offer stock for public sale, it was recommended that several loans to officers be extinguished for the public offering. In the process of extinguishing these loans the transactions described above occurred. The Committee goes on to explain that "[T]he Layton Bank was concerned that the stock was not readily marketable. However, Franklin would not guarantee the loans because that would establish liabilities for the company and defeat the objective of having the officer loans paid off (i.e., a guarantee would have traded an insider loan for an insider guarantee). Franklin wanted the loans to be made, however, and it was proposed that Franklin agree to repurchase the stock -- which was extremely valuable -- in the event of default." The Committee further argues that because of the increasing value of the stock, Franklin stood to make a profit on the repurchase should it have become necessary. The Committee concludes that given the situation the repurchase agreement was not "a 'guarantee' of any sort."

Included with the Committee's Response are letters from the First National Bank of Layton and another bank that the Committee used, attesting to the fact that such repurchase agreements are common practice when non-publicly traded stock is used to collateralize a loan. The letter from the First National Bank of Layton explains that the purpose of the loan was the repayment of a Franklin debt of $184,317 with the balance "placed in undisbursed" to be issued upon request for campaign use. With respect to the collateral the letter states that "it should be noted that many banks do not lend funds based on security of non-publicly traded stock. This exception to bank policy was made due to the repurchase agreement from Franklin International."

The letter from the second bank was a response to a hypothetical lending situation. In discussing non-publicly traded stock as collateral the bank states that "[I]f closely held or non-exchange traded stock is proposed as collateral it would be altogether common for a bank to require a repurchase (by the issuing firm) agreement of the stock collateral. The repurchase agreement then mitigates the risk (of potentially illiquid stock collateral) that the bank bears when non-publicly traded stock collateralizes a loan."

The Committee did not provide any of the other specific information requested in the Interim Audit Report.

The Committee's Response confirms that the repurchase agreement was necessary for the loan to be made. The lending institution states that accepting the stock as collateral was an exception to bank policy made due to the repurchase agreement. Franklin guaranteed a market for collateral that otherwise would not have been acceptable to the bank. This action falls within the definition of loan at section 100.7(a)(1)(i) of the Commission's regulations which states that a loan includes any guarantee, endorsement, and <u>any other form of security</u>. The fact that the arrangement was an ordinary course of business transaction for the bank; that at least part of the loan was beneficial to Franklin; that the repurchase agreement may have protected Franklin's Subchapter S status; or that Franklin could have made a profit on any stock that was repurchased under the agreement, does not change the fact that a campaign loan was made that, absent the repurchase agreement provided by Franklin, would not have been made.

D. Apparent Excessive Contributions

Section 441a(a) of Title 2 of the United States Code states, in relevant part, that 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.

Section 441f of Title 2 of the United States Code states that no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.

Section 100.7(a)(1) of Title 11 of the Code of Federal Regulations states that the term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states, in part, that any contribution made by more than one person, except for contributions made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A contribution made by more than one person that does not indicate the amount to be attributed to each contributor shall be attributed equally to each contributor.

If a contribution to a candidate on its face or when aggregated with other contributions from the same contributor exceeds the limitations on contributions, the treasurer may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that contributions which exceed the contribution limitation may be deposited into a campaign depository. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR

§§110.1(b) and 110.1(k), as appropriate. If a redesignation or reattribution is not obtained, the treasurer shall, within 60 days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states, in part, that any contribution which appears to be illegal and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds.

Sections 110.1(k)(3) and (5) of Title 11 of the Code of Federal Regulations state, in part, that if a political committee receives a written reattribution of a contribution to a different contributor, the treasurer shall retain the written reattribution signed by each contributor. If a political committee does not retain the written records concerning reattribution as required, the reattribution shall not be effective, and the original attribution shall control.

A review of contributions from individuals was conducted to determine if contributions in excess of the limitations were received. Twenty four such contributions from 17 contributors were identified. The excessive portions of these contributions total $19,450.

Among the excessive contributions are a number of instances where checks drawn on joint accounts were attributed to account holders who had not signed the contribution check and for which no signed reattribution had been obtained. Similarly, five of the excessive contributions were reported in more than one named account holder, for example John and Susanne Lindquist, but only one of the individuals signed the check. Also, some excessive contributions were assigned to more than one election without the requisite redesignations.

Six of the excessive contributions are associated with the same individual. That individual made two $1,000 contributions on October 6, 1992, designated for the primary and general elections. In addition, six other $1,000 contributions were received on the same date drawn on three other accounts. Each account listed this individual as account holder with the addition of the words "Custodian For" another individual. The other individuals appear to be the contributor's children in that two of the three have "student" listed as their occupation on Committee disclosure reports. None of the checks bear the signatures of these individuals. Three of the checks are designated for the primary election and three are designated for the general election.

A search of the Committee's files did not produce any evidence of written reattributions or redesignations for any of the excessive contributions noted. Further, neither a separate account for potential excessive contributions nor any attempt to monitor amounts required to be held in the Committee's regular accounts was found. None of the excessive contributions had been refunded.

A listing of the excessive contributions was provided to the Committee at the exit conference with a recommendation that all of the excessive contributions be refunded or that it be demonstrated that the contributions are not in excess of the limitations. In response to the exit conference the Committee stated that refunds had been or would be delivered to 11 of the contributors and submitted copies of unnegotiated refund checks. These checks total $5,600. The Committee also stated that information on the remaining contributions would be forwarded as soon as possible.

In the Interim Audit Report it was recommended that the Committee demonstrate that the remaining contributions are not in excess of the contribution limitations. With respect to the contributions drawn on the "Custodian" accounts the evidence was to include statements signed by the recorded contributor to establish that they voluntarily made the decision to contribute and that the funds were previously owned and controlled exclusively by the recorded contributors and were not the proceeds of a gift intended to be a contribution to the Candidate. Absent evidence that these contributions are not excessive, it was recommended that the Committee refund the contributions and submit copies of both sides of the negotiated refund checks.

With respect to excessive contributions the Response states that the Committee had a system in place for checking on the source of contributions drawn on joint accounts and seeking reattributions and redesignations. The Committee goes on to describe a three step procedure including telephone calls, written requests, and follow-up calls. However, during the audit fieldwork few redesignation or reattribution letters were found. In addition the Committee submitted copies of refund checks for each of the contributions questioned in the Interim Audit Report. Of the $19,450, copies of refund checks totaling $7,700 are negotiated Committee checks, while the remainder are cashier's checks. For the cashier's checks there is no evidence of delivery or negotiation.

E. Apparent Excessive Contributions from Staff Advances

Section 441a(a)(1)(A) of Title 2 of the United States Code states that 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.

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

If the payment is not exempted, it shall be considered a contribution unless, it is for the individual's transportation and normal subsistence expenses incurred by other than a volunteer, while traveling on behalf of a candidate or political committee of a political party; 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 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.

The Committee's payments of expense reimbursements were reviewed to determine if contributions from staff advances had been made. As part of the Audit staff's analysis, contributions resulting from untimely reimbursement of expenses were added to direct contributions made by the individual. The review disclosed that Michael Tullis, the Committee's Custodian of Records, was the only individual making excessive contributions from advances he made to the Committee for his own travel and subsistence, others' travel and subsistence, as well as, campaign office expenses, media expenses, and other miscellaneous items. These contributions resulted from extensive campaign use of Mr. Tullis' personal credit card. The Audit staff determined that the highest outstanding balance owed to Mr. Tullis was $22,206 on June 1, 1992. At the time of the audit, no expense reimbursement requests were outstanding.

At the exit conference, the Committee was presented with a schedule of Mr. Tullis' excessive contributions. Mr. Tullis acknowledged that he had made an error in judgment in using his personal credit card to pay Committee expenses and that he would most likely not be able to demonstrate that no excessive contributions occurred.

The Interim Audit Report recommendation with respect to this matter stated that the Committee should either demonstrate that no contribution occurred with respect to these expense reimbursements, or offer any other information that is believed to be relevant to the issue.

The Response states that since the regulation allows 60 days to reimburse expenses paid by credit card, that most of the charges were reimbursed before becoming contributions. The Committee also notes that in many cases, the Audit staff analysis uses the date the expense was incurred rather than the closing date of the credit card statement on which the charge first appears as provided in the regulation.

The Committee has not read the regulation correctly. While it is true that expenses paid by an individual by personal credit card for his own travel and subsistence do not become a contribution if reimbursed within 60 days of the closing date of the credit card statement on which the charge first appears, the same is not true of expenses other than personal travel and subsistence. Expenses for other than the individuals personal travel and subsistence are contributions on the date incurred. In Mr. Tullis' case the majority of the $22,206 cited in the Interim Audit Report consisted of four charges for newspaper advertising totaling $21,109 and an amount for the purchase of a computer.

With respect to using the closing date of Mr. Tullis' credit card statement, when that information was available and the expense was for Mr. Tullis' travel and subsistence, the closing date was used. The Committee states in the Response that it is attempting to locate additional copies of Mr. Tullis' credit card statements.

The conclusion reached in the Interim Audit Report is unchanged.

F. Contributions Subject to 48 Hour Disclosure Notices

Section 434(a)(6) of Title 2 of the United States Code requires that each treasurer of the principal Campaign committee of a candidate shall notify the Clerk, the Secretary, or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of $1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and the amount of the contribution. The notification required under this paragraph shall be in addition to all other reporting requirements under this Act.

The Audit staff reviewed individual contributions to determine which contributions required notification within 48 hours of receipt. Contributions requiring the 48 hour notice were received within two and twenty days of the nominating Convention (6/26-27/92), and the Primary (9/8/92) and General (11/3/92) elections. The Interim Audit Report stated that the review identified a total of 181 contributions which required 48 hour notices. The Interim Audit Report also concluded that, of these, the Committee failed to file the required notices for 41 contributions totaling $797,001, including 8 from the Candidate totaling $750,000.

At the exit conference, Committee representatives were provided with a schedule of items for which the required notices were not filed. The Committee did not provide an explanation of why the notices were not filed.

In the Interim Audit Report it was recommended that the Committee provide an explanation, including an account of any mitigating circumstances, as to why these notices were not filed.

In the Response the Committee states that it exercised tremendous effort to file every necessary 48-hour notice and was surprised to learn that the audit indicated 41 omissions. The Committee goes on to explain that its telephone records indicate that on both October 30, and November 3, 1992 two items were faxed to the Office of the Secretary of the Senate. The Committee believes that in both cases the documents faxed were 48-hour contribution reports. However, in both cases the public record reflects only one report filed on that day. Although the Committee has not been able to locate copies of the material faxed, it believes that a portion of the 41 omissions were included on those reports.

In reviewing this matter during the preparation of this report, a number of errors were noted in the original analysis. After re-examining the workpapers it was determined that the Committee was required to file 131 contribution notices, and that 37 had not been filed. These 37 contributions total $649,001 (See Attachment 1).

With respect to the Committee's discussion of the documents faxed to the Secretary of the Senate, the explanation would at best explain only one of the missing notices, assuming that, the faxed documents were 48-hour notices; were not re-transmitals of others on the same day; and, were filed timely. That contribution was a $100,000 receipt from the Candidate.

The 37 contributions for which no notice was filed include six from the Candidate totaling $600,000; six totaling $10,000 relating to the pre-primary period when no 48-hour notices were filed: and, twenty-two non-candidate contributions during the period October 15-20, 1992.

Except for the change in the number and amounts resulting from the correction of the original analysis, the conclusion contained in the Interim Audit Report is unchanged.

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

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR 4208
STAFF MEMBER: Peter G. Blumberg

SOURCE: INTERNALLY GENERATED

RESPONDENTS: Friends of Bob Bennett Senatorial Campaign Committee, and
Stanley R. De Waal, as treasurer,
Senator Robert F. Bennett
Franklin Quest Corporation, f/k/a Franklin International Institute,
Alan C. Ashton,
Karen H. Huntsman,
Michael Tullis.

RELEVANT STATUTES/
REGULATIONS: 2 U.S.C. § 434(a)(6)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b(a)
2 U.S.C. § 441f
11 C.F.R. § 100.7(a)(1)
11 C.F.R. § 110.1(i)(2)
11 C.F.R. § 110.1(k)
11 C.F.R. § 110.4(b)(2)
11 C.F.R. § 110.10(a)-(b)
11 C.F.R. § 116.5

INTERNAL REPORTS CHECKED: Audit Documents; Disclosure Reports.

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was generated by an audit of Friends of Bob Bennett Senatorial Campaign Committee undertaken in accordance with 2 U.S.C. § 438(b). Friends of Bob Bennett Senatorial

Campaign Committee (the "Committee") is the authorized committee of Senator Robert F. Bennett, who was a 1992 candidate for the office of United States Senator for Utah.[1] The Audit Division's referral materials are attached. Attachment 1. During the audit process, the Committee submitted materials relevant to this report, and these materials are also attached. Attachments 2-3.

The audit materials contain findings regarding possible prohibited contributions to the Committee from the candidate's former employer, Franklin International Institute ("Franklin"). These contributions came in the form of payments from a consulting agreement and a bank loan guarantee made in the form of a stock repurchase agreement. The referral materials also contain findings on the receipt of excessive contributions from individuals and the failure to file 48-hour notice reports. This Office recommends that the Commission find reason to believe that the Committee has received, and Franklin has made, prohibited contributions through the transactions between the two entities. Additionally, we recommend that the Commission find reason to believe that the Committee received excessive contributions from several individuals and that the Committee failed to file 48-hours disclosure reports.

II. FACTUAL AND LEGAL ANALYSIS

A. PROHIBITED CORPORATE CONTRIBUTIONS

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 officer or director of a corporation to consent to any corporate expenditures which may be

[1] The Committee's original title was "Bennett for Senate" and the referral materials use that title. The Committee filed an amendment to its Statement of Organization on April 6, 1995 designating a new Treasurer and the new name.

prohibited contributions to candidates or committees. *Id.* In addition, it is unlawful for any candidate or political committee to accept or receive any contribution from a corporation. *Id.*

1. Corporate Contribution Through Consulting Agreement with the Candidate

Candidates for federal office may make unlimited expenditures from their personal funds to their campaigns. 11 C.F.R. § 110.10(a)-(b). "Personal funds" include any assets which, under applicable state law, at the time he or she became a candidate, the candidate had a legal right of access to or control over, and with respect to which the candidate had either legal or rightful title; an equitable interest; dividends and proceeds from the sale of the candidate's stocks or other investments; income from trusts established before the candidacy or from trusts established by bequest after candidacy of which the candidate is the beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; proceeds from lotteries or similar legal games of chance; and salary and other earned income from bona fide employment. 11 C.F.R. § 110.10(b).

The Commission has previously considered whether a candidate's receipt of payments from a former employer in exchange for consulting services constituted bona fide employment income. Advisory Opinion ("AO") 1979-74. The Commission concluded that if the employment was not bona fide, the payments would constitute a contribution. To determine whether employment is bona fide: (1) the employment must be genuinely independent of the candidacy; (2) the compensation must be made exclusively in consideration of services; and (3) the amount of the compensation cannot exceed the amount that would be paid to a similarly qualified person.[2]

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[2] The Commission has also addressed similar situations involving federal candidates who receive payments from their law partnerships during campaigns. In the law partnership context, the Commission has considered the basis of the partner's compensation to determine whether the payments comply with the FECA. *See* AO 1978-6 (where partner income is based on client-billable hours); AO 1979-58 (where partner income is based on an ownership interest in the partnership); MUR 3435 (Commission determined that there was no reason to believe that a

AO 1979-74. Additionally, the consulting services should not constitute a stipend to allow an employee to test political waters. *See generally* AO 1992-3 (validating a corporation's provision of health benefits to an employee on leave to campaign for federal office since the time period for the benefit was short (one month) and because the corporation had a preexisting policy to provide certain temporary benefits to employees engaged in political activities).

a. Background

Senator Robert F. Bennett was the president of Franklin, a corporation, from October 1984 to January 1991 and its chief executive officer from December 1986 to April 1991.[3] As of June 2, 1992, the candidate also owned 11.37% of Franklin's stock.

Senator Bennett resigned as president on January 14, 1991. Attachment 2 at 4. According to the Committee, the resignation was part of a trend for the company's founders to release control of the company to new management. *Id.* However, Senator Bennett continued to serve as chief executive officer of Franklin after his resignation as president, while looking for a new role with the company. *Id.* at 5. At an April 8, 1991 board meeting, Senator Bennett announced to the board that he sought to develop a new consulting division for Franklin. Attachment 4. The minutes of the meeting indicate that some of the board members raised questions concerning the "legal structure" of the new division and its ownership. *Id.* at 2. The board agreed to study the issue of the ownership of the entity. *Id.* In general, however, it appears

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law partnership made excessive contributions in violation of 2 U.S.C. § 441a when it made payments to a partner who was a federal candidate since the compensation reflected his proprietary interest in the firm).

[3] Franklin was incorporated in December 1983 and operated as a Subchapter S corporation between September 1987 and June 2, 1992. On June 2, 1992, Franklin terminated its Subchapter S status and offered its stock for public sale. Previously, no more than 35 stockholders, all of whom were required to be either individuals, estates, or certain trusts, could hold stock in Franklin because of its status as a Subchapter S corporation. 26 U.S.C. § 1361(b). At the time of the public stock offering, Franklin changed its name to Franklin Quest Corp. After Franklin terminated its Subchapter S status, the candidate remained a member of the Franklin Board of Directors.

that Board members viewed the new division as a development that will "open up some avenues for the corporation." *Id.* On April 9, 1991, the day following the board meeting, Franklin issued a press release announcing the creation of the "Franklin Consulting Group" ("FCG") to be headed by Senator Bennett. Attachment 5 at 1. The press release described FCG as a "separate operating entity within the Franklin family of corporations and operating divisions." *Id.* In the press release, Senator Bennett described himself as "an entrepreneur at heart," and stated that "building a new company is, for [him], more fun than running an established one." *Id.* at 3. The press release did not mention that Franklin apparently was still studying the legal and corporate structure of the new entity.

According to the Committee, Franklin studied the corporate structure of FCG in the months following the April 8, 1991 board meeting, and ultimately decided not to pursue the development. Attachment 2 at 5. In a June 25, 1991 memorandum, from Senator Bennett to the Franklin Executive Committee, Senator Bennett confirmed "discussions" that FCG would be dissolved as a division of Franklin and that he would create a new separate company that he would own. Attachment 6. The memorandum noted that the FCG budget would be translated into a monthly retainer to be paid to the entity through August 31, 1991, at which time the retainer would be renegotiated. *Id.* The memorandum also discussed some of the projects to be pursued by the new entity. *Id.* at 1-2. The Committee provided a July 1, 1991, Franklin Executive Committee draft memorandum to Senator Bennett that confirmed the dissolution of FCG. Attachment 7 at 1.[4] The Committee explained that this memorandum sets out the terms of a future

[4] This Office's copy of this memorandum is stamped "draft." Under Utah law, contracts may be rendered enforceable merely by the parties' performance of the terms even if there is no actual "meeting of the minds." *See Dayton v. Gibbons & Reed Co.*, 365 P.2d 801, 802 (Utah 1961).

consulting agreement between Franklin and the new consulting group to be owned by Senator Bennett. *Id.* The memorandum called for a monthly retainer to be paid to the new consulting entity commencing on July 1, 1991 and ending June 30, 1992. *Id.* at 2. The draft agreement left blank the space for the amount of the retainer. *Id.* At the July 8, 1991 Franklin Board meeting, the board decided "in light of Robert Bennett's decision to resign as CEO of Franklin and pursue an independent consulting firm, not to create any form of consulting group."[5] Attachment 8 at 1.

Information provided by the Committee indicates that in July 1991, Senator Bennett founded Robert F. Bennett Associates ("Bennett Associates"). Franklin paid Bennett Associates a monthly retainer of $43,750. Bennett Associates opened a bank account on July 17, 1991. Attachment 1 at 9. Bennett Associates' only paying client was Franklin. *Id.* Bennett Associates had one regular employee in addition to Senator Bennett. *Id.*

In mid-August 1991, after consulting a little over a month, Senator Bennett announced that he was seeking election to the United States Senate seat being vacated by Senator Garn. *Ex-Utah Sen. Bennett's Son Wants Post Dad Held 24 Years*, Rocky Mtn. News, Aug. 15, 1991, at 34.[6] The Committee opened its bank account on September 6, 1991, and filed a Statement of Organization, dated September 30, 1991. The candidate filed a Statement of Candidacy on September 30, 1991 as well. Of the $38,000 contributed by Senator Bennett to his campaign in the fall of 1991, $35,000 was paid directly from the Bennett Associates account. Additionally, on January 30, 1992, Franklin made a payment of $131,250 to Bennett Associates which constituted a

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[5] It appears that Franklin had already "created" FCG prior to this meeting since it was funding such an entity and had announced its creation in a press release. The board's action on July 8 clearly ended the existence of FCG, and signaled the beginning of Senator Bennett's consulting firm.

[6] On May 28,1991, Senator Jake Garn of Utah announced that he was not seeking reelection to the United States Senate. After his retirement, Senator Garn took a seat on the board of directors of Franklin. Senator Garn's announcement took place in the period between the original creation of FCG and its dissolution.

three-month advance on the retainer due to the candidate.[7] On the same day of the advance, Bennett Associates transferred $90,000 to Senator Bennett's personal account and Senator Bennett wrote an $80,000 check payable to the Committee out of his personal account.[8]

The Committee's response to the Interim Audit Report noted that Senator Bennett's departure was "a major event at Franklin" and that Franklin wanted to compensate Senator Bennett through the consulting agreement for his "seven years of successful leadership and management" and to ensure his availability to consult on important matters and to prevent him from competing directly with Franklin.[9] Attachment 2. The Committee argued that the consulting agreement was standard for departing Franklin executives and provided several sample severance agreements. Attachment 9. In addition, the Committee noted that Senator Bennett did significant work for Franklin, including consulting on matters related to a public stock offering, reviewing an employee stock ownership plan, and assisting Franklin operations in Japan. Attachment 2 at 9-10. However, the Committee did not provide documentation in response to Audit inquiries demonstrating that

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[7] The advance that was paid on January 30, 1992 appears to represent the monthly consulting fee for February 1992 through April 1992 since Franklin would not make its next consulting fee payment to Bennett Associates until mid-May.

[8] Bennett Associates incorporated in January 1992. However, after it incorporated, Bennett Associates no longer directly funded the Committee. Instead, withdrawals from Bennett Associates accounts were initially deposited into a joint account held by Senator Bennett and his spouse, and then paid out of this account to the Committee. Since the funds traveled through a joint account, Ms. Bennett may have made a contribution to the Committee if any of her proportionate share of the account holdings were used for the contributions. *See* 11 C.F.R. § 110.10(b)(3). Under Utah law, Ms. Bennett's share of the holdings is determined "in proportion to [her] net contributions ... to the sums on deposit" unless there is clear and convincing evidence of a different intent for ownership share. Utah Code Ann. § 75-6-103(1). The Office of General Counsel believes that no contribution was made by Ms. Bennett since there is no evidence that the Bennetts intended to divide the assets of the joint account by any manner other than the net contributions method and the funds deposited into this account, with minor exception, were those that the candidate received from Franklin and not the candidate's personal funds. On the date of the $90,000 deposit, the Bennett's account had a balance of $6,247.80.

[9] The memorandum setting out the terms of the new consulting agreement did not contain a no-compete clause. Moreover, although the consulting agreement memorandum did not state the amount of the monthly retainer, the Committee acknowledged that the candidate received a retainer from Franklin in the amount of $43,750 per month. Attachment 2 at 6-7.

these actions were taken by Senator Bennett or that any actions described in Senator Bennett's consulting agreement were ever taken.

Specifically with regard to the advance of $131,250, the Committee described the payment as monies that the candidate had already earned at the time of payment since it would have been part of his 1991 bonus paid out around January 1992.[10] Attachment 2 at 11-12. Further, the Committee stated that the consulting agreement permitted a lump-sum payment and that Franklin could have paid the entire consulting contract amount at any time. *Id.* The Committee also noted that Franklin had on one occasion advanced payments to another consultant.[11] *Id.* at 12.

b. Analysis

The structure and timing of the consulting payments from Franklin to Bennett Associates indicate that the funds eventually received by the Committee may not have been the personal funds of the candidate under 11 C.F.R. § 110.10. Rather these funds appear to be prohibited contributions that were funneled from Franklin, through the consulting agreement with Bennett Associates, to the Committee. Based on the facts presented at this time, it does not appear that the monies paid to Senator Bennett by Franklin constitute earned income from bona fide employment. 11 C.F.R. § 110.10(b)(2). There is no evidence suggesting that: (1) the consulting was

[10] Other Franklin consulting agreements for departing executives specifically call for bonuses to be paid to the individuals. Mr. Bennett's agreement did not provide for a bonus.

[11] The Committee states that Franklin accelerated its consulting agreement payment to Richard Winwood by paying him $300,000 "to close out" his agreement in 1992. However, based on a review of Mr. Winwood's agreement, it appeared that he was still owed approximately 36 months worth of payments at $32,000 a month when he "close[d] out" his agreement. Thus, the Winwood advance appears to be different in nature from Senator Bennett's advance since Senator Bennett did not have to forgo any of the overall amount due him as consideration for the advance. This Office will seek information surrounding the circumstances of the Winwood advance, and any other advances, through discovery.

independent of the candidacy; (2) the candidate performed adequate services for Franklin in consideration of the compensation; and (3) the amount of compensation was comparable to similarly situated employees. AO 1979-74.

There is information indicating that Senator Bennett's consulting arrangement was not genuinely independent of his candidacy. AO 1979-74. The timing of the Bennett Associate's consulting arrangement with Franklin suggests that the consulting agreement was linked to Senator Bennett's candidacy. The payments were negotiated and contracted for around the time that Senator Bennett was contemplating his Senate candidacy. Further, at times when Senator Bennett's campaign needed funds for the campaign, Franklin agreed to advance funds outside its previous agreements.

Senator Bennett and Franklin entered into the consulting agreement in July 1991. The agreement was, therefore, entered into approximately one month after the public announcement by Senator Garn that he would be retiring and, therefore, initiating an open election in Utah in 1992 for the U.S. Senate. Senator Bennett joined the race for this Senate seat in August 1991, approximately one month after apparently entering into the agreement to consult on behalf of Franklin. Thus, both parties to the consulting agreement may have had some knowledge that Senator Bennett was going to enter the Senate campaign. Additionally, the fact that the agreement was entered into just prior to Senator Bennett's decision to enter the Senate race suggests that Senator Bennett may use his consulting arrangement with Franklin to assist in financing the campaign.

The Committee implies in its response to audit findings that Senator Bennett was planning to leave Franklin as early as January 1991, and thus, the consulting business was not

created as a mechanism to fund the campaign. However, the documents submitted indicate that when Senator Bennett was resigning the presidency of Franklin in January 1991, he was taking over FCG, a new Franklin division. Furthermore, Senator Bennett retained his position as Chief Executive Officer of Franklin. At the time that FCG was created, Franklin issued a press release announcing that FCG was a Franklin subsidiary. The documentation confirming that Senator Bennett would completely separate from Franklin and create Bennett Associates was dated following Senator Garn's retirement announcement. Thus, Senator Bennett may have begun preparing for his own candidacy at the time the consulting agreement was arranged.

Another significant indication that the consulting agreement was linked to the campaign was the three-month advance made to the candidate on January 30, 1992.[12] The terms of the consulting agreement, pursuant to which Senator Bennett was paid, called for monthly payments, and did not discuss advance payments. Even though other consulting agreements for departing Franklin executives specifically called for bonuses, Mr. Bennett's agreement did not provide for one. Additionally, the Committee failed to produce any documentation relating to Franklin's payment of the advance as requested during the audit.[13]

Further, the circumstances surrounding the payment of the advance indicate that it may have been politically motivated. After receiving the money from Franklin, Bennett Associates

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[12] This payment appears to be an advance since it adds up to three months worth of consulting payments. Franklin's practice had been to pay Bennett Consulting a sum of $43,750 near the middle of each month. Thus, on January 21, 1992, Franklin made its January payment of $43,750 to Bennett Consulting. However, ten days later, Franklin made another payment of $131,250 to Bennett Consulting and Bennett Consulting did not receive a monthly payment in February, March or April 1992.

[13] The Committee claims that the bonus was earned by Senator Bennett by January 1992 since he would have received a bonus had he stayed with the company and because the anticipated bonus was used to calculate the monthly consulting payment. However, this assertion is difficult to judge since no documents speak to the basis of Senator Bennett's monthly consulting payment amount aside from the Committee Treasurer's narrative response to the Interim Audit Report. Additionally, this Office is not currently aware of when Franklin issued bonuses to its employees and how close that date is to the date of the advance.

transferred most of it to Senator Bennett's personal account from where it was placed into Committee accounts. This three-way transaction was all performed on the same day.[14] Based on the Committee's financial status at the time, it appears that the Committee was in need of funds and thus, this payment was made at a crucial time during the campaign.[15] Indeed, the Committee paid several vendors within a day of receiving the advance, including its media vendor ($10,000), its attorneys ($3,257), the Internal Revenue Service ($3,190), its American Express bill ($14,993) and its payroll. According to the Committee itself, Franklin agreed to the advance because a stock offering that would have enabled Senator Bennett to sell his Franklin stock to finance the campaign was delayed from January 1992 until June 1992. Attachment 10. Thus, because of this delay, Senator Bennett was denied funds he may have anticipated using at this time. Also at this time, Senator Bennett had been significantly outspent by his leading opponent and was publicly stating that the campaign was more expensive than he had thought it would be.[16] In fact, Senator Bennett was in danger of not enduring his party's primary convention and therefore, could have suffered an early departure from the campaign.[17] This advance from Franklin suggests that

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[14] Senator Bennett transferred $80,000 of the advance into the Committee's accounts. The fact that funds were placed into the candidate's personal account before they flowed to the Committee does not eliminate the corporate status of the funds and transform the funds into the personal assets of the candidate. *See* 11 C.F.R. 110.10.

[15] The 1991 end-of-year report, the last report filed by the Committee prior to the advance, disclosed that the Committee had only $12,556 cash-on-hand and had debts of $39,065.78. The next report, the April 1992 Quarterly showed that the Committee had received approximately $15,000 in private contributions during the reporting period, with no itemized contributions during January 1992.

[16] Senator Bennett had been outspent by Joe Cannon, a multimillionaire industrialist and the early front-runner for the Republican nomination, $833,143 to $63,485 according to published reports. Paul Rolly, *GOP Fears Infighting Could Hurt Party in U.S. Senate Race*, Salt Lake Tribune, March 15, 1992. Senator Bennett's concern over the unexpected expense of the campaign was also reported. *Candidates Look in Mirror for Money*, Salt Lake Tribune May 11, 1992 ("[Senator Bennett] said the heavy self-donation and spending by Cannon forced him to spend more than he planned.")

[17] The Republican party of Utah conducted a convention on June 26-27, 1992 to select its nominees for the general election. Pursuant to party rules, any candidate who received 70% of the convention delegates' votes would not have to run in a primary election open to all voters. If no candidate reached this threshold, the top two finishers advanced to a primary election. Published reports early in the election indicated that Mr. Cannon had significant support. *See* Rolly, *GOP Fears ...*; Mark Trahart, *$2 Million Spent So Far by Cannon No Joke to Rivals in Senate*

Senator Bennett was in contact with Franklin and could rely on the corporation to provide the Committee with funds when necessary. These activities are evidence that both parties may have manipulated the agreement to provide funds to the Committee at crucial times during the election. Therefore, it appears that the consulting arrangement between Bennett Consulting and Franklin may not have been independent of the campaign.

The Office of General Counsel also believes that Franklin's payments to the candidate may have resulted in a contribution because the candidate did not provide adequate services in consideration of the compensation. AO 1979-74. Specifically, there is no indication that Senator Bennett performed the services that were required by the consulting agreement. The audit staff requested information that would demonstrate that the candidate performed work; no such documentation was provided. Although the consulting agreement sets out certain specific tasks that Bennett Associates was to perform for Franklin, documentation on these specific tasks was not produced despite specific requests from the audit staff.[18] These documents, should they exist, will be sought during discovery.

Additionally, the consulting agreement provided that Franklin would offset amounts from Senator Bennett's monthly payment to take into account the consulting business's use of Franklin personnel. However, no offsets were ever made, and Bennett Associates always received its full

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Race, Salt Lake Tribune, April 17, 1992. Ultimately, Mr. Cannon failed to receive 70% of the convention votes and a primary occurred. However, second place in the convention vote was closely contested as Senator Bennett advanced to the primary by defeating the third place finisher by only 1%. Dan Harrie and Michael Phillips, *Utah GOP: Out with Old, In with New*, Salt Lake Tribune, June 28, 1992.

[18] The Committee indicated that Senator Bennett provided other services to Franklin, including consultations on franchising in Japan. However, no documents demonstrating that this work was done were provided during the audit process.

payment. This may indicate that Senator Bennett never used any Franklin personnel and possibly never worked on any Franklin projects.

Finally, the Office of General Counsel believes that Franklin's payment to Senator Bennett may have resulted in contributions because the level of compensation may not have been comparable to similarly situated employees and contained certain indications that it was merely a stipend to the candidate to assist the campaign. AO 1979-74; AO 1992-3. Senator Bennett was paid $43,750 per month pursuant to his agreement with Franklin. It is unclear at this point whether this was a fair amount of compensation for Senator Bennett. Other departing Franklin executives had entered into consulting agreements with Franklin, although all of these individuals received substantially smaller payments than Senator Bennett or had agreed to less favorable terms. For example, in two of the three agreements with departing Franklin executives obtained during the audit, Franklin inserted non-competition clauses. Senator Bennett did not agree to such a restriction. Moreover, Senator Bennett's agreement did not contain any terms settling any proprietary rights Senator Bennett might be able to claim against Franklin or contain any other similar release from liability, thus allowing him to make claims against Franklin later. These types of waivers had been included in two of the three departure agreements for different Franklin executives obtained during the audit. Finally, Senator Bennett's agreement did not contain a clause terminating consulting payments in the event Senator Bennett failed to provide the contracted-for services. This clause was included in one of the three sample agreements. These types of restrictions and covenants had been included in the other Franklin consulting agreements and their absence from Senator Bennett's agreement provided a benefit to Senator Bennett.

Additionally, Senator Bennett's agreement permitted him to retain his stock holdings in the company even after his departure from the company although his shareholder agreement might prohibit such an arrangement.[19] The absence of restrictions in Senator Bennett's consulting agreement, as well as his ability to retain Franklin stock, indicate that Senator Bennett may have considered reuniting with Franklin in the event his candidacy was unsuccessful. If this was true, the benefits paid to Senator Bennett could be a prohibited contribution in the form of a stipend assisting the candidate while he pursued the candidacy. *See* AO 1992-3. In sum, Senator Bennett received a significant payment, and unlike many other departing executives, did not have to forgo many of his rights when accepting the payments.

Therefore, it appears that the consulting agreement and the payments arising thereunder may not have been independent of Senator Bennett's candidacy or paid as compensation for an appropriate level of service and may have been at an inappropriate amount. It appears that all consulting payments, including the three-month advance, may have been contributions to the Committee from Franklin.[20] Thus, the Office of General Counsel recommends that the Commission find reason to believe that Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. De Waal, as treasurer, violated 2 U.S.C. § 441b by accepting prohibited contributions. Furthermore, in light of Senator Robert F. Bennett's apparent close involvement in

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[19] Certain closely held corporations often require shareholders to enter buy-and-sell agreements that place restrictions on stockholders. *See* Utah Code Ann. § 16-10a-627 (1993). The Committee failed to produce Senator Bennett's stockholder agreement with Franklin to enable the Commission to determine the transferability options of Franklin stock at the time of the agreement.

[20] Unlike similar situations in MUR 3435 and AO 1979-58 where the candidates drew upon their proprietary interest in their partnerships to contribute personal funds to their respective committees, the candidate in this matter was relying upon Franklin, an incorporated entity, to finance his campaign. The only proprietary interest in the corporation that the candidate could transfer to the Committee are his earnings distributions for his ownership share and the sale of his stock. 11 C.F.R. 110.10(b)(2). There is no information that demonstrates the consulting agreement represented the candidate's proprietary interest in the corporation.

these transactions, the Office of General Counsel recommends that the Commission find reason to believe that Senator Robert F. Bennett violated 2 U.S.C. § 441b by accepting prohibited contributions on behalf of Friends of Bob Bennett Senatorial Campaign Committee. Further, this Office recommends that the Commission find reason to believe that Franklin Quest Corporation violated to 2 U.S.C. § 441b by making prohibited contributions.

2. Corporate Contribution Through Stock Repurchase Agreement

The term "contribution" includes any direct or indirect payment, distribution, loan (other than from a bank, pursuant to applicable banking law and regulations, in the ordinary course of business), advance, deposit, gift of money, any services, or anything of value. 2 U.S.C. § 441b(b)(2). The term "loan" includes a guarantee, endorsement, and any other form of security. 11 C.F.R. § 100.7(a)(1)(i). A loan is a contribution by each endorser or guarantor. 11 C.F.R. § 100.7(a)(1)(i)(C). Each endorser or guarantor shall be deemed to have contributed that portion of the total amount for which he or she agreed to be liable in a written agreement. *Id.* A corporation has guaranteed a loan if the corporation agrees to repurchase stock of a shareholder who uses the corporation's stock as collateral for a bank loan. *See Brittingham v. Commissioner*, 57 T.C. 91, 93 (1971); *Commercial Capital Corp. v. Commissioner*, 27 T.C.M. (CCH) 897 (1968). If a candidate obtains a loan in connection with his campaign, the candidate will be considered as having obtained such loan on behalf of his committee. 11 C.F.R. 101.2(a); *See generally,* AO 1994-26 (discussing lines of credit issued to candidate).

a. Background

In February 1992, Senator Bennett applied for a line of credit of $385,000 from the First National Bank of Layton ("the Bank") in Layton, Utah. Attachments 11-12. Senator Bennett used

$184,316.79 of the loan proceeds to repay Franklin for other loans it had made to him. Attachment 12 at 21. The balance of the line of credit (approximately $200,000) was for the "campaign." *Id.* The loan was secured by 6,160 shares of Franklin stock, a repurchase agreement from Franklin, and a guarantee from Senator Bennett's spouse.[21] Attachment 11.

The stock repurchase agreement took the form of a letter to the Bank from Franklin's President and Chief Operating Officer, Arlen Crouch, dated February 24, 1992, stating that in case of loan default by Senator Bennett, Franklin "will honor the Bank's request to redeem part or all of the pledged stock. ... ." Attachment 13 at 1. A "secretary's certificate" was attached to the letter stating that the Franklin Executive Committee directed Mr. Crouch to prepare and execute the letter and that Franklin was bound by the terms of the letter. *Id.* at 3-4. The letter also stated that Franklin would pay the Bank the market rate for the stock, "but not less than $500.00 per share." *Id.* at 1. By setting this price, the Bank was assured that it would recoup its investment through Franklin if Senator Bennett defaulted.[22]

In addition to agreeing to the repurchase agreement for Senator Bennett's stock, Franklin agreed to a similar arrangement for two other Franklin executives, also apparently to assist the officers in repaying insider loans owed to Franklin. Attachment 13. These lines of credit from the Bank, however, seem to be only for the amount needed to repay the insider loan, and did not include additional amounts for the officers' personal uses. The Bank required the loan repurchase agreement because "many banks do not lend funds based on security of non-publicly traded

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[21] The Office of General Counsel is not recommending that the candidate's spouse made a contribution to the Committee as a result of her signature on the loan documents. The collateral (the Franklin stock) was wholly owned by the candidate, and the spouse's signature, as guarantor, appears to have been a formality. 11 C.F.R. § 100.7(a)(1)(i)(D).

[22] If the repurchase agreement had not set a minimum price for the Franklin stock, and its market price collapsed, then the Bank's recourse would have been limited to market value of the stocks

stock." Attachment 11. The Bank claims that it made an "exception to [its] policy" of rejecting loans secured by non-marketable stock because the Franklin stock was offered as collateral with a repurchase agreement. *Id.*

The Committee stated that the repurchase agreement was not a guarantee since Franklin never assumed any risk in this transaction since the stock that it could have purchased was very valuable. The Committee also stated that this type of transaction was not uncommon and provided a letter from Patrick M. Floyd, a vice-president of First Interstate Bank of Utah, explaining the process. *See* Attachment 14.

b. Analysis

It appears that the repurchase agreement with the Bank resulted in a guarantee from Franklin to the candidate. 11 C.F.R. § 100.7(a)(1)(i). Since the explicit terms of the loan indicate that its purpose was for the "campaign," the candidate obtained the loan on behalf of the Committee. 11 C.F.R. § 101.2(a); *see generally* AO 1994-26. Therefore, the guarantee of the loan from Franklin to the Committee was a contribution. *See* 11 C.F.R. § 100.7(a)(1)(i)(c).

The Bank recognized the risk involved in making loans secured by non-publicly traded stock. *See* Attachment 11. Therefore, the Bank required a written agreement obligating Franklin to redeem the stocks before it would make a loan to the candidate and Franklin agreed to do so. Attachment 11 and Attachment 13. Absent the repurchase agreement, the Bank would not have made the loan to the candidate. Attachment 11. Franklin agreed to be liable in a written agreement by submitting a letter to the Bank obligating itself to redeem the pledged stock in the event of the candidate's default. This is consistent with the description of guarantor under the Commission regulations. 11 C.F.R. § 100.7(a)(1)(i)(C).

With the candidate's delivery of the stock to the Bank in consideration for the loan, the Bank became a perfected secured creditor, Utah Code Ann. § 70A- 8-321 (Uniform Commercial Code on perfected security interest in investment securities), with the right to have the stock redeemed by Franklin. Attachment 12 at 11. The legal and practical effect of these transactions was that if Senator Bennett defaulted on his loan, Franklin would have been required to pay a minimum of $500.00 per share of stock to redeem the stock from the Bank to cover the candidate's default. Furthermore, Franklin was legally obligated to pay this amount to the Bank, regardless of the lack of marketability and value of the stock at the time of default. Attachment 13 at 1. Therefore, the Office of General Counsel believes that Franklin was a guarantor of the loan to the candidate. 11 C.F.R. § 100.7(a)(1)(i)(C).

The Committee claims that Franklin did not guarantee the loan because Franklin did not assume any risk in the obligation to redeem the stock from the Bank since the stock was very valuable. However, the Committee's position does not contemplate the possibility that the value of this non-publicly traded stock (which the Bank refused to accept as collateral without a repurchase agreement) at the time of the candidate's default could have been less that the $500.00 per share that Franklin was obligated to pay to the Bank to satisfy the candidate's debt. If Franklin was required to redeem the shares to cover the candidate's default and the actual value of the shares was less than $500.00 per share, then Franklin would have suffered a loss equal to the difference between the market value of the shares and the minimum redemption price of $500.00 per share. The Committee's assertion that Franklin's repurchase agreement did not result in a guarantee because Franklin did not assume any risk in the transaction is, in fact, contravened by the Committee's own authority on repurchase agreements, Mr. Floyd of First Interstate Bank. Mr.

Floyd stated that the repurchase agreement "mitigates the risk [to the bank] (of potentially illiquid stock collateral)." Attachment 14. As Mr. Floyd implicitly suggests, a bank would view this stock as risky collateral, despite the Committee's contrary view. Indeed, the whole repurchase agreement transaction would not have been necessary had Layton Bank viewed the Franklin stock as risk-free, and, therefore, not sought the repurchase agreement.[23]

Therefore, the Office of General Counsel recommends that the Commission find reason to believe that Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. De Waal, as treasurer, have violated 2 U.S.C. § 441b by accepting a prohibited contribution. Furthermore, in light of Senator Robert F. Bennett's apparent close involvement in these transactions, the Office of General Counsel recommends that the Commission find reason to believe that Senator Robert F. Bennett violated 2 U.S.C. § 441b by accepting prohibited contributions on behalf of Friends of Bob Bennett Senatorial Campaign Committee. Further, this Office recommends that the Commission find reason to believe that Franklin Quest Corporation violated to 2 U.S.C. § 441b by making a prohibited contribution.

B. EXCESSIVE CONTRIBUTIONS

The Act states that 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). Furthermore, no officer or employee of a political committee shall knowingly accept a

[23] The loan was processed only because of Franklin's agreement to repurchase the stock. Therefore, this agreement to repurchase the stock constitutes "something of value" to the Committee. *See* 11 C.F.R. § 100.7(a)(1).

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.*

1. Direct Contributions

Any contribution made by more than one person shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. 11 C.F.R. § 110.1(k). If a contribution made by more than one person does not indicate the amount to be attributed to each contributor, the contribution shall be attributed equally to each contributor. *Id.* If a contribution to a candidate or political committee, either on its face or when aggregated with other contributions from the same contributor, exceeds the limitations on contributions, the treasurer of the recipient political committee may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. *Id.*

A contribution shall be considered to be reattributed to another contributor if: (1) the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution and informs the contributor that he or she may request the return of the excessive portion of the contribution; and (2) within 60 days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended. *Id.*

Contributions which on their face exceed the contribution limitations may be deposited in a campaign depository. 11 C.F.R. § 103.3(b)(3). If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor. *Id.* If a

redesignation or reattribution is not obtained, the treasurer shall refund the contribution to the contributor within 60 days of the treasurer's receipt of the contribution. *Id.* Such contributions shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. 11 C.F.R. § 103.3(b)(4). The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds. *Id.*

The referral materials disclose that 18 contributions from 16 contributors totaling $11,450 were made in excess of the contribution limitations. Checks drawn on joint accounts were attributed to account holders who had not signed the contribution checks; and the Committee's treasurer did not obtain signed reattributions or redesignations for these checks. Five of the excessive contributions were drawn from joint accounts; however, only one account holder of each respective joint account signed the contribution check. Furthermore, the Committee failed to obtain redesignations from contributors whose excessive contributions were allocated to a different election cycle. One individual, Alan C. Ashton, made excessive contributions totaling $2,250.

The Audit Division's examination of the Committee's records did not reveal any evidence of written reattributions or redesignations for any of the excessive contributions, the existence of a separate account for excessive contributions or any attempt to monitor amounts required to be held in the Committee's regular accounts. At the time of the audit, none of the excessive contributions had been refunded.

The Committee asserted in response to the Interim Audit Report that refunds had been or would be delivered to 11 of the contributors and the Committee submitted copies of unnegotiated

refund checks totaling $5,600 to the Commission. The Committee subsequently submitted copies of refund checks for each of the contributions which had been disputed in the Interim Audit Report. Refund checks totaling $7,700 are negotiated Committee checks; while the balance of refund checks were cashier's checks for which there is no evidence of delivery or negotiation. The Committee argues that it had a system for checking the source of contributions drawn on joint accounts and seeking reattributions and redesignations. Generally, the Audit Division found few reattribution or redesignation letters during the audit.

Thus, the Office of General Counsel recommends that the Commission find reason to believe that Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. De Waal, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions. The Office of General Counsel also recommends that the Commission find reason to believe that Alan C. Ashton violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. De Waal, as treasurer.[24] However, due to the amounts involved and in light of the Commission's staffing constraints and limited resources, the Office of General Counsel recommends that the Commission take no further action against Alan C. Ashton. *Heckler v. Chaney*, 470 U.S. 821 (1985). If the Commission adopts this recommendation, this Office will send an admonishment letter to Mr. Ashton.

2. Contributions from Minors

Minor children may make contributions to political committees if the decision to contribute is voluntary, the contributed funds are owned or controlled by the child, and the

[24] Based on established Commission practice, this Office makes no recommendation with respect to the remaining individuals who made excessive contributions to the Committee.

contribution does not constitute the proceeds of a gift whose purpose is to provide funds for the contribution. 11 C.F.R. § 110.1(i)(2)(i)-(iii).

It is unlawful for a person to make a contribution in the name of another person, or for another person to knowingly permit his name to be used to effect such a contribution. 2 U.S.C. § 441f. It is also unlawful for a political committee to accept a contribution made by one person in the name of another person. *Id.* Examples of contributions made in the name of another include: (1) making a contribution when all or part of the source was provided to the contributor from another person without disclosing the source of the money at the time of the contribution; and (2) making a contribution and attributing as the source another person when in fact the contributor is the source. 11 C.F.R. § 110.4(b)(2).

Karen H. Huntsman was associated with eight $1,000 contributions which collectively would result in an excessive contribution if all the contributions were attributed to her. Ms. Huntsman made two $1,000 contributions designated for Senator Bennett's primary and general election campaigns on October 2, 1992. Attachment 15 at 1. The checks were written from an account held jointly by her and her husband, Jon Huntsman. On the same date, six $1,000 contributions were made to Senator Bennett's primary and general election campaigns from three separate accounts on which Ms. Huntsman appears on the check as the account custodian on behalf of three others individuals, James H. Huntsman, Jennifer Huntsman, and Mark H. Huntsman. *Id.* at 2-3. The six contributions at issue appear to be drawn on custodial accounts held for Ms. Huntsman's children. The other individuals on the accounts share her surname and the Committee reported their occupations as students on its disclosure reports. The address on the checks was the same as that of the business address of Mr. Huntsman. Ms. Huntsman signed two

of the six contribution checks, and the other four contribution checks were signed by a third person who appears to be the family accountant.[25] In response to audit inquiries concerning these funds, the Committee refunded the contributions.[26]

Because the Committee did not provide any information on the contributions during the audit process several questions remain regarding the circumstances surrounding these transactions.[27] For example, it is unclear whether the other individuals on the accounts are in fact Ms. Huntsmen's children, whether they are minors, and, if so, whether the contributions were made knowingly and voluntarily. 11 C.F.R. § 110.1(i)(2). The source of the funds used to make the contributions is also unknown. However, Utah adopted the Uniform Transfers to Minors Act which requires that custodians be designated for certain accounts held for minors. Utah Stat. Ann. 75-5a-101 *et seq.* (1995). If these accounts were established for her minor children, Ms. Huntsman, as the account custodian, would have exercised control over the account and would have had authority to make contributions to the Committee. Utah Stat. Ann. 75-5a-112(2) (1995) (granting custodian "all the rights, powers, duties, and authority" over the account). Therefore, in the absence of information from the Committee establishing that the contributions were lawfully made by the other individuals on the accounts, the contributions are attributable to Ms. Huntsman. *See* 11 C.F.R. § 110.1(i)(2)(ii); General Counsel's Report in MURs 4252, 4253, 4254, and 4255, dated April 4, 1996. When these contributions are aggregated with her prior contributions to the

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[25] Jon Huntsman made a contribution to the Committee on October 2, 1992 as well. Additionally, Jon, Karen, James, Jennifer, and Mark Huntsman all made contributions to the Bush-Quayle '92 Primary Committee on April 6, 1992.

[26] The refunds were made with cashier's checks, however, and therefore, it is not possible to determine whether the checks were cashed or if the Committee asked the bank to cancel the checks.

[27] Judging from the face of the checks, it appears that all three custodial accounts had been open 11-23 months prior to the subject contributions and 11-30 other checks had been written on the accounts prior to the subject contributions.

Committee, it appears that Ms. Huntsman has made contributions in excess of the contribution limits. 2 U.S.C. § 441a(a)(1)(A). Additionally, it appears that the Committee has accepted these excessive contributions.

Thus, the Office of General Counsel recommends that the Commission find reason to believe that Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. De Waal, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions from Karen H. Huntsman. The Office of General Counsel also recommends that the Commission find reason to believe that Karen H. Huntsman violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to Friends of Bob Bennett Senatorial Campaign Committee.[28] In view of the questions raised concerning these contributions, the Office of General Counsel recommends that the Commission seek additional information from Ms. Hunstman concerning these matters. However, this Office does not recommend that the Commission authorize formal discovery in this instance. This Office will modify the language in the reason-to-believe notification letter to be sent to Ms. Huntsman to request that in response to the Commission's finding she provide the dates of birth of the persons on the accounts, information concerning the types of accounts from which the contributions were made, and the circumstances surrounding the decisions to make the contributions to the Committee.[29] *See* 11 C.F.R. § 110.1(i)(2)(i)-(iii).

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[28] This Office does not recommend that the Commission find that the contributions resulted in a contribution made in the name of another. 2 U.S.C. § 441f. Under the Utah Transfers to Minors Act, the "custodial property [of the account] is indefeasibly vested in the minor." Utah Stat. Ann. 75-5a-112(2) (1995). If the accounts were held for minors, the minors reported as contributors would own the account assets. *See* 11 C.F.R. § 110.4(b)(2)(i) and (ii); *see also* MURs 4252, 4253, 4254, and 4255.

[29] The Commission has previously addressed cases when contributions were made from custodial accounts held for minors. *See* MURs 4252, 4253, 4254 and 4255. In these MURs, it initially appeared that, based on news reports, certain individuals made contributions to political committees out of their children's accounts without the children's involvement. The amounts contributed ranged from $3,000 to $15,000 per family. The Commission sought information surrounding these contributions through discovery. In three of the four cases, the families presented information indicating that the children were politically active and made the contributions on their own volition and

3. Staff Advances

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 before such expenditures are considered 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 the individual who is not a volunteer, where such expenses are incurred while the individual is traveling on behalf of a candidate or a political committee of a political party. 11 C.F.R. § 116.5(b); *see also*, Explanation and Justification for 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26382-83 (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).

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with their own money. If similar information is provided by Ms. Hunstman, then this Office likely will recommend that no further action be taken with respect to these contributions.

The Commission intended section 116.5 to provide a limited exception to the general rules governing contributions for an individual's personal transportation expenses, and for 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 116.5 out of concern that during critical periods in a campaign when an authorized committee is experiencing financial difficulties, individuals may attempt to circumvent the contribution limitations by paying committee expenses and not expecting reimbursement for substantial periods of time. Explanation and Justification for 11 C.F.R. § 116.5, 55 Fed. Reg. 26382-3 (June 27, 1989); *see also* MUR 1349 (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 referral materials demonstrate that Michael Tullis, the Committee's Custodian of Records, made excessive contributions resulting from the untimely reimbursement of his expenses. *See* Attachment 16 (schedule of contributions). Mr. Tullis made advances through the use of his personal credit card to the Committee for his travel and subsistence expenses, the travel and subsistence expenses of others, campaign office expenses, media expenses, and other miscellaneous items. On June 1, 1992, Mr. Tullis' outstanding credit balance was at its highest level, totaling $22,206.[30] Four charges for newspaper advertising totaling $21,109 and one charge for the purchase of a computer constitute the majority of the $22,206. At the time the audit was

[30] The calculation of Mr. Tullis' contributions included an adjustment to recognize his $1,000 contribution limit to the primary campaign. The contributions at issue took place during the primary campaign, thus his general election contribution limit was not applied against the contributions. The $1,000 travel exemption was not credited to the specific contributions made at the highest outstanding balance level because those expenditures were not travel-related.

conducted, no expense reimbursement requests were outstanding. At the exit conference, Mr. Tullis indicated that he had made an error in judgment in using his personal credit card to pay Committee expenses and that he was unable to demonstrate that he had made no excessive contributions.

The Committee asserted that it reimbursed Mr. Tullis for his expenses before they became contributions under 11 C.F.R. § 116.5(b). The Committee also asserted that the Audit staff incorrectly used the date the expenses were incurred rather than the closing date of the credit card statement on which the charges first appear in evaluating whether the expenses were contributions to the Committee. When such information was available, the Audit Division used the closing date of Mr. Tullis' credit card statement to determine whether his own travel and subsistence expenditures were contributions.

The exemption contained in 11 C.F.R. § 116.5(b) pertains only to expenses paid by an individual by personal credit card for his or her own travel and subsistence. Because Mr. Tullis made expenditures for the travel and subsistence of others, the exemption provided in 11 C.F.R. § 116.5(b) does not apply and these expenditures resulted in contributions to the Committee on the date they were incurred. In addition, Mr. Tullis paid for his own expenditures with his personal credit card and was not reimbursed for these costs within 60 days, thus his own expenditures were contributions to the Committee. 11 C.F.R. § 116.5(b).

The Office of General Counsel recommends that the Commission find reason to believe that Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. De Waal, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting contributions totaling $22,206 in excess of the contribution limitations from this individual. The Office of General Counsel also

recommends that the Commission find reason to believe that Mr. Tullis violated 2 U.S.C. § 441a(1)(A) by making contributions totaling $22,206 in excess of his individual contribution limitation. However, consistent with action taken in other matters, this Office recommends no further action with respect to Mr. Tullis. *See* MUR 4172 (the Commission found reason to believe that certain individuals had made excessive contributions under 11 C.F.R. § 116.5, but the Commission took no further action). If the Commission adopts this recommendation, this Office will send an admonishment letter.

C. 48-HOUR DISCLOSURE OF CONTRIBUTIONS

The Act requires the principal campaign committee of a candidate to notify the Clerk of the House, the Secretary of the Senate, or the Commission, as appropriate, in writing, of any contribution of $1,000 or more received by any authorized committee of such candidate after the twentieth day, but more than 48 hours before, any election. 2 U.S.C. § 434(a)(6)(A); 11 C.F.R. § 104.5. Notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate, the office sought by the candidate, the identification of the contributor, the date of receipt, and amount of the contribution. *Id.* This required notification shall be in addition to all other reporting requirements under the Act. 2 U.S.C. § 434(a)(6)(B).

The primary and the general elections for the Senate in Utah were held on September 8, 1992 and November 3, 1992, respectively. The Act required the Committee to notify the Commission of all contributions of $1,000 or more which were received between August 19, 1992 and September 6, 1992 and between October 14, 1992 and November 1, 1992, within 48 hours after the receipt of such contributions. 2 U.S.C. § 434(a)(6)(A). The Audit Division determined that the Committee was required to file 131 such notices but failed to file 37 notices. These 37

contributions total $649,001. Of these 37 contributions, six contributions totaling $600,000 were made by the Candidate. The Committee also failed to timely file six notices for contributions totaling $10,000 in connection with the pre-primary period and 22 notices for non-candidate contributions made between October 15, 1992 and October 20, 1992.

At the audit exit conference, the Audit staff provided the Committee representatives with a schedule of items for which the required notices had not been filed. The Committee did not explain why the notices had not been filed for these contributions. The Interim Audit Report recommended that the Committee provide an explanation and an account of any mitigating circumstances as to why the notices were not filed.

The Committee asserted that any omissions were inadvertent and that the Office of the Secretary of the Senate had been notified of some of the unreported contributions. The Committee asserted that it filed two reports on October 30, 1992 and November 3, 1992. According to the Committee, its telephone records show that two items were faxed to the Office of the Secretary of the Senate on each of these dates. However, the public record shows that only one report was filed on each of these dates. Although the Committee has been unable to locate copies of the faxed items, it asserted that those items constituted a portion of the requisite 48-hour contribution reports. The audit referral materials concluded that only one of the 37 contributions could have been among the transmissions to the Office of the Secretary of the Senate.[31] The Office of General Counsel recommends that the Commission find reason to believe that Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. De Waal, as treasurer, violated 2 U.S.C.

[31] The Audit Division concluded that the Committee's response to the Interim Audit Report only accounted for one of the missing notices, assuming that the faxed documents were 48-hour notices, were not retransmittals of other notices submitted on the same day, and were timely filed notices.

§ 434(a)(6)(A) by failing to report 37 campaign contributions of $1,000 or more which were received after the twentieth day, but more than 48 hours before the primary and general election, within 48 hours of receipt of the contributions.

III. PLAN FOR FUTURE INVESTIGATION

The Office of General Counsel believes that the issues relating to the payments made under the consulting agreement and the stock repurchase agreement will have to be investigated further. This Office seeks Commission authorization to depose Senator Bennett to ask him about the circumstances and details concerning the consulting agreement and the stock repurchase agreement. For instance, it is unclear how much work was performed by Senator Bennett pursuant to the consulting agreement. Also, substantial questions remain with regard to the timing of the agreement since the Committee continues to argue that this agreement was contemplated as early as January 1991 despite documentation that indicates that the separation between Senator Bennett and Franklin was discussed much later. Additionally, the circumstances surrounding the three-month advance should be probed since the timing of the payment and its eventual use by the campaign suggest that a political motivation was involved in the transaction. Further, this Office seeks to depose Franklin officers and the Bank to gain additional knowledge about the loan guarantee. Specifically, this Office will speak to members of the Franklin Executive Committee who appear to have detailed knowledge of the consulting agreement and loan repurchase obligation. From the available documents, at this time, it appears that Arlen Crouch, the current President of Franklin was a member of the Executive Committee and aware of the transaction with Senator Bennett. Through discovery, this Office will seek the names of others who may have first-hand knowledge of these transactions. This Office also will submit document requests to Senator

Bennett and to Franklin. Further, this Office will seek documents from the First National Bank of Layton, and depose Howard G. Holt, the bank president and the person who, based on available documentation, appears to have approved the loan and negotiated the repurchase agreement with Franklin.

RECOMMENDATIONS

1. Find reason to believe that Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. De Waal, as treasurer, violated 2 U.S.C. § 441b by receiving prohibited contributions from Franklin Quest Corporation through consulting payments to Senator Robert F. Bennett;

2. Find reason to believe that Senator Robert F. Bennett violated 2 U.S.C. § 441b by accepting prohibited contributions on behalf of Friends of Bob Bennett Senatorial Campaign Committee through consulting payments;

3. Find reason to believe that Franklin Quest Corporation violated 2 U.S.C. § 441b by making prohibited contributions to Friends of Bob Bennett Senatorial Campaign Committee through consulting payments to Robert F. Bennett Associates;

4. Find reason to believe that Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. De Waal, as treasurer, violated 2 U.S.C. § 441b by receiving prohibited contributions from Franklin Quest Corporation through a loan repurchase agreement entered into by Franklin Quest Corporation and the First National Bank of Layton;

5. Find reason to believe that Senator Robert F. Bennett violated 2 U.S.C. § 441b by accepting prohibited contributions on behalf of Friends of Bob Bennett Senatorial Campaign Committee through a loan repurchase agreement entered into by Franklin Quest Corporation and the First National Bank of Layton;

6. Find reason to believe that Franklin Quest Corporation violated 2 U.S.C. § 441b by making prohibited contributions to Friends of Bob Bennett Senatorial Campaign Committee through a loan repurchase agreement entered into by Franklin Quest Corporation and the First National Bank of Layton;

7. Find reason to believe that Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. De Waal, as treasurer, violated 2 U.S.C. § 441a(f), by receiving excessive contributions;

8. Find reason to believe that Alan C. Ashton violated 2 U.S.C. § 441a(a)(1)(A), by making excessive contributions, but take no further action;

9. Find reason to believe that Karen H. Huntsman violated 2 U.S.C. § 441a(a)(1)(A), by making excessive contributions;

10. Find reason to believe that Michael Tullis violated 2 U.S.C. § 441a(a)(1)(A), by making excessive contributions, but take no further action;

11. Find reason to believe that Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. De Waal, as treasurer, violated 2 U.S.C. § 434(a)(6)(A);

12. Approve the attached subpoenas to Senator Robert F. Bennett, Arlen Crouch, and Howard G. Holt;

13. Approve the appropriate letters and the attached Factual and Legal Analyses to Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. De Waal, as treasurer, Senator Robert F. Bennett, Franklin Quest Corporation, Karen H. Huntsman, Alan C. Ashton and Michael Tullis; and

14. Close the file with respect to Alan C. Ashton and Michael Tullis.

5/21/96
Date

Lawrence M. Noble
General Counsel

Attachments

1. Audit referral.
2. Bennett for Senate response to Interim Audit Report.
3. Bennett for Senate memorandum to the Commission (April 26, 1995).
4. Minutes of Franklin International Institute, Inc. Board meeting held on April 8, 1991.
5. Press release issued by Franklin International Institute, Inc. on April 9, 1991.
6. Memorandum to Franklin International Institute, Inc. Executive Committee from Robert F. Bennett, June 25, 1991.
7. Memorandum to Robert F. Bennett from Franklin International Institute, Inc. Executive Committee, July 1, 1991.
8. Minutes of Franklin International Institute, Inc. Board meeting held on July 8, 1991.
9. Miscellaneous severance agreements prepared by Franklin International Institute, Inc.
10. Letter to Monica L. Kujovsky, Audit Division from the Bennett Committee, March 7, 1994.
11. Letter to Robert F. Bennett and Michael Tullis from Howard G. Holt, CEO, First National Bank of Layton, August 2, 1994.
12. Loan Application of Robert F. Bennett to First National Bank of Layton.
13. Letter to Howard Holt, CEO, First National Bank of Layton from Arlen Crouch, President and CEO, Franklin International Institute, Inc., February 24, 1992.
14. Letter to Robert F. Bennett from Patrick M. Floyd, Senior Vice President, First Interstate Bank, August 3, 1994.
15. Contribution checks from Huntsman family.
16. Staff advance schedule for Michael T. Tullis.
17. Subpoena to Robert F. Bennett.
18. Subpoena to Arlen Crouch.
19. Subpoena to Howard G. Holt.
20. Factual and Legal Analysis to Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. De Waal, as treasurer.
21. Factual and Legal Analysis to Franklin Quest Corporation.
22. Factual and Legal Analysis to Senator Robert F. Bennett.
23. Factual and Legal Analysis to Alan C. Ashton.
24. Factual and Legal Analysis to Karen Huntsman.
25. Factual and Legal Analysis to Michael Tullis.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/ LISA R. DAVIS
COMMISSION SECRETARY

DATE: MAY 28, 1996

SUBJECT: MUR 4208 - FIRST GENERAL COUNSEL'S REPORT DATED MAY 21, 1996.

The above-captioned document was circulated to the Commission on: WEDNESDAY, MAY 22, 1996 at 4:00 p.m.

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

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

This matter will be placed on the meeting agenda for:
FIRST MEETING IN JUNE, 1996

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

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 3, 1996

SENSITIVE
JUN 11 1996
EXECUTIVE SESSION

MEMORANDUM

TO: Marjorie W. Emmons
Secretary to the Commission

FROM: Lawrence M. Noble
General Counsel

BY: Kim Bright-Coleman K.N for KBC
Associate General Counsel

SUBJECT: MUR 4208

This Office requests that the Commission hold over discussion on MUR 4208 from the Executive Session scheduled for June 6, 1996, to the Executive Session scheduled for the week of June 10, 1996. The staff member assigned to this matter will be out of the Office in training on the date for which this matter is currently calendared.

Staff Assigned: Peter G. Blumberg

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Friends of Bob Bennett Senatorial Campaign Committee and Stanley R. De Waal, as treasurer;	)	
Senator Robert F. Bennett;	)	MUR 4208
Franklin Quest Corporation, f/k/a Franklin International Institute;	)	
Alan C. Ashton;	)	
Karen H. Huntsman;	)	
Michael Tullis.	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on June 25, 1996, do hereby certify that the Commission took the following actions in MUR 4208:

1. Failed in a vote of 2-2 to pass a motion to:

   a) Find reason to believe that Friends of Bob Bennett Senatorial Campaign Committee and Stanley R. De Waal, as treasurer, violated 2 U.S.C § 441b by receiving prohibited contributions from Franklin Quest Corporation through consulting payments to Senator Robert F. Bennett.

(continued)

b) Find reason to believe that Senator Robert F. Bennett violated 2 U.S.C § 441b by accepting prohibited contributions on behalf of Friends of Bob Bennett Senatorial Campaign Committee through consulting payments.

c) Find reason to believe that Franklin Quest Corporation violated 2 U.S.C. § 441b by making prohibited contributions to Friends of Bob Bennett Senatorial Campaign Committee through consulting payments to Robert F. Bennett Associates.

d) Find reason to believe that Friends of Bob Bennett Senatorial Campaign Committee and Stanley R. De Waal, as treasurer, violated 2 U.S.C. § 441b by receiving prohibited contributions from Franklin Quest Corporation through a loan repurchase agreement entered into by Franklin Quest Corporation and the First National Bank of Layton.

e) Find reason to believe that Senator Robert F. Bennett violated 2 U.S.C § 441b by accepting prohibited contributions on behalf of Friends of Bob Bennett Senatorial Campaign Committee through a loan repurchase agreement entered into by Franklin Quest Corporation and the First National Bank of Layton.

f) Find reason to believe that Franklin Quest Corporation violated 2 U.S.C § 441b by making prohibited contributions to Friends of Bob Bennett Senatorial Campaign Committee through a loan repurchase agreement entered into by Franklin Quest Corporation and the First National Bank of Layton.

(continued)

Commissioners McGarry and Thomas voted affirmatively for the motion; Commissioners Aikens and Elliott dissented. Commissioner McDonald was not present.

2. Decided by a vote of 4-0 to take the following actions:

a) Find reason to believe that Friends of Bob Bennett Senatorial Campaign Committee and Stanley R. De Waal, as treasurer, violated 2 U.S.C. § 441a(f) by receiving excessive contributions.

b) Find reason to believe that Alan C. Ashton violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions, but take no further action.

c) Find reason to believe that Karen H. Huntsman violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions.

d) Find reason to believe that Michael Tullis violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions, but take no further action.

e) Find reason to believe that Friends of Bob Bennett Senatorial Campaign Committee and Stanley R. De Waal, as treasurer, violated 2 U.S.C. § 434(a)(6)(A).

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

(continued)

3. Decided by a vote of 4-0 to

a) Reject recommendation number 12 in the General Counsel's report dated May 21, 1996.

b) Approve appropriate letters and appropriate Factual and Legal Analyses to Friends of Bob Bennett Senatorial Campaign Committee and Stanley R. De Waal, as treasurer, Karen H. Huntsman, Alan C. Ashton, and Michael Tullis.

c) Close the file with respect to Alan C. Ashton and Michael Tullis.

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

Attest:

6-26-96
Date

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

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 16, 1996

Stanley R. DeWaal, Treasurer
Friends of Bob Bennett Senatorial Campaign Committee
257 East 200 South, Suite 950
Salt Lake City, UT
84111

RE: MUR 4208

Dear Mr. DeWaal:

On June 25, 1996, the Federal Election Commission found that there is reason to believe that Friends of Bob Bennett Senatorial Campaign Committee ("the Committee") and you, as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(a)(6)(A), provisions of the Federal Election Campaign Act of 1971, as amended. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. On this date, the Commission also considered the issue of whether the Committee, and you, as treasurer, violated 2 U.S.C. § 441b by receiving contributions from Franklin Quest Co., f/k/a Franklin International Institute, Inc. ("Franklin"). The issue involved payments from Franklin to Senator Robert F. Bennett pursuant to a consulting services arrangement and a loan obtained by Senator Bennett from the First National Bank of Layton. There was an insufficient number of votes to find reason to believe that the Committee and you, as treasurer, violated 2 U.S.C. § 441b.

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 additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

cc: Senator Robert F. Bennett

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

Respondent: Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. De Waal, as treasurer.
257 East 200 South, Suite 950
Salt Lake City, UT 84111

I. BACKGROUND

This matter was generated by information obtained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities pursuant to the Federal Election Campaign Act of 1971, as amended. 2 U.S.C. § 437g(a)(2). This matter is related to the audit of Friends of Bob Bennett Senatorial Campaign Committee f/k/a Bennett for Senate ("the Committee").

II. FACTUAL AND LEGAL ANALYSIS

A. EXCESSIVE CONTRIBUTIONS

The Act states that 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). Furthermore, no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures. *Id.*

1. Direct Contributions

Any contribution made by more than one person shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. 11 C.F.R. § 110.1(k). If a contribution made by more than one person does not indicate the amount to be attributed to each contributor, the contribution shall be attributed equally to each contributor. *Id.* If a contribution to a candidate or political committee, either on its face or when aggregated with other contributions from the same contributor, exceeds the limitations on contributions, the treasurer of the recipient political committee may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. *Id.*

A contribution shall be considered to be reattributed to another contributor if: (1) the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution and informs the contributor that he or she may request the return of the excessive portion of the contribution; and (2) within 60 days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended. *Id.*

Contributions which on their face exceed the contribution limitations may be deposited in a campaign depository. 11 C.F.R. § 103.3(b)(3). If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor. *Id.* If a redesignation or reattribution is not obtained, the treasurer shall

refund the contribution to the contributor within 60 days of the treasurer's receipt of the contribution. *Id.* Such contributions shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. 11 C.F.R. § 103.3(b)(4). The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds. *Id.*

The referral materials disclose that 18 contributions from 16 contributors totaling $11,450 were made in excess of the contribution limitations. Checks drawn on joint accounts were attributed to account holders who had not signed the contribution checks; and the Committee's treasurer did not obtain signed reattributions or redesignations for these checks. Five of the excessive contributions were drawn from joint accounts; however, only one account holder of each respective joint account signed the contribution check. Furthermore, the Committee failed to obtain redesignations from contributors whose excessive contributions were allocated to a different election cycle. One individual, Alan C. Ashton, made excessive contributions totaling $2,250.

The Audit Division's examination of the Committee's records did not reveal any evidence of written reattributions or redesignations for any of the excessive contributions, the existence of a separate account for excessive contributions or any attempt to monitor amounts required to be held in the Committee's regular accounts. At the time of the audit, none of the excessive contributions had been refunded.

The Committee asserted in response to the Interim Audit Report that refunds had been or would be delivered to 11 of the contributors and the Committee submitted copies

of unnegotiated refund checks totaling $5,600 to the Commission. The Committee subsequently submitted copies of refund checks for each of the contributions which had been disputed in the Interim Audit Report. Refund checks totaling $7,700 are negotiated Committee checks; while the balance of refund checks were cashier's checks for which there is no evidence of delivery or negotiation. The Committee argues that it had a system for checking the source of contributions drawn on joint accounts and seeking reattributions and redesignations. Generally, the Audit Division found few reattribution or redesignation letters during the audit.

Therefore, there is reason to believe that Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. De Waal, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions.

2. Contributions from Minors

Minor children may make contributions to political committees if the decision to contribute is voluntary, the contributed funds are owned or controlled by the child, and the contribution does not constitute the proceeds of a gift whose purpose is to provide funds for the contribution. 11 C.F.R. § 110.1(i)(2).

Karen H. Huntsman was associated with eight $1,000 contributions which collectively would result in an excessive contribution if all the contributions were attributed to her. Ms. Huntsman made two $1,000 contributions designated for Senator Bennett's primary and general election campaigns on October 2, 1992. The checks were written from an account held jointly by her and her husband, Jon Huntsman. On the same date, six $1,000 contributions were made to Senator Bennett's primary and general

election campaigns from three separate accounts on which Ms. Huntsman appears on the check as the account custodian on behalf of three others individuals, James H. Huntsman, Jennifer Huntsman, and Mark H. Huntsman. The six contributions at issue appear to be drawn on custodial accounts held for Ms. Huntsman's children. The other individuals on the accounts share her surname and the Committee reported their occupations as students on its disclosure reports. The address on the checks was the same as that of the business address of Mr. Huntsman. Ms. Huntsman signed two of the six contribution checks, and the other four contribution checks were signed by a third person who appears to be the family accountant.[1] In response to audit inquiries concerning these funds, the Committee refunded the contributions.[2]

Because the Committee did not provide any information on the contributions during the audit process several questions remain regarding the circumstances surrounding these transactions.[3] For example, it is unclear whether the other individuals on the accounts are in fact Ms. Huntsmen's children, whether they are minors, and, if so, whether the contributions were made knowingly and voluntarily. 11 C.F.R. § 110.1(i)(2). The source of the funds used to make the contributions is also unknown. However, Utah adopted the Uniform Transfers to Minors Act which requires that custodians be designated for certain accounts held for minors. Utah Stat. Ann. 75-5a-101 *et seq.*

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[1] Jon Huntsman made a contribution to the Committee on October 2, 1992 as well. Additionally, Jon, Karen, James, Jennifer, and Mark Hunstman all made contributions to the Bush-Quayle '92 Primary Committee on April 6, 1992.

[2] The refunds were made with cashier's checks, however, and therefore, it is not possible to determine whether the checks were cashed or if the Committee asked the bank to cancel the checks.

[3] Judging from the face of the checks, it appears that all three custodial accounts had been open 11-23 months prior to the subject contributions and 11-30 other checks had been written on the accounts prior to the subject contributions.

(1995). If these accounts were established for her minor children, Ms. Huntsman, as the account custodian, would have exercised control over the account and would have had authority to make contributions to the Committee. Utah Stat. Ann. 75-5a-112(2) (1995) (granting custodian "all the rights, powers, duties, and authority" over the account). Therefore, in the absence of information from the Committee establishing that the contributions were lawfully made by the other individuals on the accounts, the contributions are attributable to Ms. Huntsman. *See* 11 C.F.R. § 110.1(i)(2); General Counsel's Report in MURs 4252, 4253, 4254, and 4255, dated April 4, 1996. When these contributions are aggregated with her prior contributions to the Committee, it appears that Ms. Huntsman has made contributions in excess of the contribution limits. 2 U.S.C. § 441a(a)(1)(A). Additionally, it appears that the Committee has accepted these excessive contributions.

Therefore, there is reason to believe that Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. De Waal, as treasurer, violated 2 U.S.C. §§ 441a(f) by accepting contributions from Karen H. Huntsman.

3. Staff Advances

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 before such expenditures are considered 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 the individual who is not a volunteer, where such expenses are incurred while the individual is traveling on behalf of a candidate or a political committee of a political party. 11 C.F.R. § 116.5(b); *see also*, Explanation and Justification for 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26382-83 (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 a limited exception to the general rules governing contributions for an individual's personal transportation expenses, and for 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 116.5 out of concern that during critical periods in a campaign when an authorized committee is experiencing financial difficulties, individuals may attempt to circumvent the contribution limitations by paying committee expenses and not expecting reimbursement for substantial periods of time. Explanation and Justification for 11

C.F.R. § 116.5, 55 Fed. Reg. 26382-3 (June 27, 1989); *see also* MUR 1349 (stating that the Commission found probable cause to believe that the Reagan for President Committee violated 2 U.S.C. § 441a(f) by waiting 81 days to reimburse a volunteer who paid $18,713 in expenses on behalf of the committee).

The referral materials demonstrate that Michael Tullis, the Committee's Custodian of Records, made excessive contributions resulting from the untimely reimbursement of his expenses. *See* Attachment 1 (schedule of contributions). Mr. Tullis made advances through the use of his personal credit card to the Committee for his travel and subsistence expenses, the travel and subsistence expenses of others, campaign office expenses, media expenses, and other miscellaneous items. On June 1, 1992, Mr. Tullis' outstanding credit balance was at its highest level, totaling $22,206.[4] Four charges for newspaper advertising totaling $21,109 and one charge for the purchase of a computer constitute the majority of the $22,206. At the time the audit was conducted, no expense reimbursement requests were outstanding. At the exit conference, Mr. Tullis indicated that he had made an error in judgment in using his personal credit card to pay Committee expenses and that he was unable to demonstrate that he had made no excessive contributions.

The Committee asserted that it reimbursed Mr. Tullis for his expenses before they became contributions under 11 C.F.R. § 116.5(b). The Committee also asserted that the Audit staff incorrectly used the date the expenses were incurred rather than the

[4] The calculation of Mr. Tullis' contributions included an adjustment to recognize his $1,000 contribution limit to the primary campaign. The contributions at issue took place during the primary campaign, thus his general election contribution limit was not applied against the contributions. The $1,000 travel exemption was not credited to the specific contributions made at the highest outstanding balance level because those expenditures were not travel-related.

closing date of the credit card statement on which the charges first appear in evaluating whether the expenses were contributions to the Committee. When such information was available, the Audit Division used the closing date of Mr. Tullis' credit card statement to determine whether his own travel and subsistence expenditures were contributions.

The exemption contained in 11 C.F.R. § 116.5(b) pertains only to expenses paid by an individual by personal credit card for his or her own travel and subsistence. Expenses for other individuals made for travel and subsistence are contributions on the date incurred. Because Mr. Tullis made expenditures for the travel and subsistence of others, the exemption provided in 11 C.F.R. § 116.5(b) does not apply and these expenditures resulted in contributions to the Committee. In addition, Mr. Tullis paid for his own expenditures with his personal credit card and was not reimbursed for these costs within 60 days, thus his own expenditures were contributions to the Committee. 11 C.F.R. § 116.5(b).

Therefore, there is reason to believe that Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. De Waal, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting contributious totaling $22,206 in excess of the contribution limitations from this individual.

B. 48-HOUR DISCLOSURE OF CONTRIBUTIONS

The Act requires the principal campaign committee of a candidate to notify the Clerk of the House, the Secretary of the Senate, or the Commission, as appropriate, in writing, of any contribution of $1,000 or more received by any authorized committee of such candidate after the twentieth day, but more than 48 hours before, any election.

2 U.S.C. § 434(a)(6)(A); 11 C.F.R. § 104.5. Notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate, the office sought by the candidate, the identification of the contributor, the date of receipt, and amount of the contribution. *Id.* This required notification shall be in addition to all other reporting requirements under the Act. 2 U.S.C. § 434(a)(6)(B).

The primary and the general elections for the Senate in the state of Utah were held on September 8, 1992 and November 3, 1992, respectively. The Act required the Committee to notify the Commission of all contributions of $1,000 or more which were received between August 19, 1992 and September 6, 1992 and between October 14, 1992 and November 1, 1992, within 48 hours after the receipt of such contributions. The Audit Division determined that the Committee was required to file 131 such notices but failed to file 37 notices. These 37 contributions total $649,001.[5]

At the audit exit conference, the Audit staff provided the Committee representatives with a schedule of items for which the required notices had not been filed. The Committee did not explain why the notices had not been filed for these contributions. The Interim Audit Report recommended that the Committee provide an explanation and an account of any mitigating circumstances as to why the notices were not filed.

The Committee asserted that any omissions were inadvertent and that the Office of the Secretary of the Senate had been notified of some of the unreported contributions. The Committee asserted that it filed two reports on October 30, 1992 and November 3,

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[5] Of these 37 contributions, six contributions totaling $600,000 were made by the Candidate. The Committee also failed to timely file six notices for contributions totaling $10,000 in connection with the pre-primary period and 22 notices for non-candidate contributions made between October 15, 1992 and October 20, 1992.

1992. According to the Committee, its telephone records show that two 48-hour contribution schedules were faxed to the Office of the Secretary of the Senate on each of these dates. However, the public record shows that only one report was filed on each of these dates. Although the Committee has been unable to locate copies of the faxed items, it asserted that those items constituted a portion of the requisite 48-hour contribution reports. The audit referral materials concluded that only one of the 37 contributions could have been among the transmissions to the Office of the Secretary of the Senate.[6] Therefore there reason to believe that Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. De Waal, as treasurer, violated 2 U.S.C. § 434(a)(6)(A) by failing to report 37 campaign contributions of $1,000 or more which were received after the twentieth day, but more than 48 hours before the primary and general election, within 48 hours of receipt of the contributions.

[6] The Audit Division found that the Committee's response to the Interim Audit Report only accounted for one of the missing notices, assuming that the faxed documents were 40-hour notices, were not retransmittals of other notices submitted on the same day, and were not timely filed notices.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 16, 1996

Karen H. Huntsman
3049 Sherwood Cir.
Salt Lake City, UT
84108

RE: MUR 4208

Dear Ms. Huntsman:

On June 25, 1996, the Federal Election Commission found that there is reason to believe you violated 2 U.S.C. § 441a(a)(1)(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. As outlined in the Factual and Legal Analysis, the Commission's finding relates to contributions attributed to you and made through accounts for which you were account custodian. These accounts appear to be held in the names of minors.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Specifically, the Commission seeks the dates of birth of the persons named on the accounts, information concerning the types of accounts from which the contributions were made, and the circumstances surrounding the decisions to make the contributions to the Committee. Please submit these 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 additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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 mist 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 437(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 Peter Blumberg, the attorney assigned to this matter, at (202) 219- 3690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

Respondent: Karen H. Huntsman
3049 Sherwood Cir.
Salt Lake City, UT 84108

I. BACKGROUND

This matter was generated by information obtained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities pursuant to the Federal Election Campaign Act of 1971, as amended. 2 U.S.C. § 437g(a)(2). This matter is related to transactions between Karen H. Huntsman and Friends of Bob Bennett Senatorial Campaign Committee f/k/a Bennett for Senate ("the Committee").

II. EXCESSIVE CONTRIBUTIONS

The Act states that 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). Furthermore, no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures. *Id.*

Minor children may make contributions to political committees if the decision to contribute is voluntary, the contributed funds are owned or controlled by the child, and the contribution does not constitute the proceeds of a gift whose purpose is to provide funds for the contribution. 11 C.F.R. § 110.1(i)(2).

Karen H. Huntsman was associated with eight $1,000 contributions which collectively would result in an excessive contribution if all the contributions were attributed to her. Ms. Huntsman made two $1,000 contributions designated for Senator Bennett's primary and general election campaigns on October 2, 1992. The checks were written from an account held jointly by her and her husband, Jon Huntsman. On the same date, six $1,000 contributions were made to Senator Bennett's primary and general election campaigns from three separate accounts on which Ms. Huntsman appears on the check as the account custodian on behalf of three others individuals, James H. Huntsman, Jennifer Huntsman, and Mark H. Huntsman. The six contributions at issue appear to be drawn on custodial accounts held for Ms. Huntsman's children. The other individuals on the accounts share her surname and the Committee reported their occupations as students on its disclosure reports. The address on the checks was the same as that of the business address of Mr. Huntsman. Ms. Huntsman signed two of the six contribution checks, and the other four contribution checks were signed by a third person who appears to be the family accountant.[1] In response to audit inquiries concerning these funds, the Committee refunded the contributions.[2]

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[1] Jon Huntsman made a contribution to the Committee on October 2, 1992 as well. Additionally, Jon, Karen, James, Jennifer, and Mark Hunstman all made contributions to the Bush-Quayle '92 Primary Committee on April 6, 1992.

[2] The refunds were made with cashier's checks, however, and therefore, it is not possible to determine whether the checks were cashed or if the Committee asked the bank to cancel the checks.

Because the Committee did not provide any information on the contributions during the audit process several questions remain regarding the circumstances surrounding these transactions.[3] For example, it is unclear whether the other individuals on the accounts are in fact Ms. Huntsmen's children, whether they are minors, and, if so, whether the contributions were made knowingly and voluntarily. 11 C.F.R. § 110.1(i)(2). The source of the funds used to make the contributions is also unknown. However, Utah adopted the Uniform Transfers to Minors Act which requires that custodians be designated for certain accounts held for minors. Utah Stat. Ann. 75-5a-101 *et seq.* (1995). If these accounts were established for her minor children, Ms. Huntsman, as the account custodian, would have exercised control over the account and would have had authority to make contributions to the Committee. Utah Stat. Ann. 75-5a-112(2) (1995) (granting custodian "all the rights, powers, duties, and authority" over the account). Therefore, in the absence of information from the Committee establishing that the contributions were lawfully made by the other individuals on the accounts, the contributions are attributable to Ms. Huntsman. *See* 11 C.F.R. § 110.1(i)(2); General Counsel's Report in MURs 4252, 4253, 4254, and 4255, dated April 4, 1996. When these contributions are aggregated with her prior contributions to the Committee, it appears that Ms. Huntsman has made contributions in excess of the contribution limits. 2 U.S.C. § 441a(a)(1)(A). Additionally, it appears that the Committee has accepted these excessive contributions.

[3] Judging from the face of the checks, it appears that all three custodial accounts had been open 11-23 months prior to the subject contributions and 11-30 other checks had been written on the accounts prior to the subject contributions.

Therefore, there is reason to believe that Karen H. Huntsman violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. De Waal, as treasurer.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 16, 1996

Michael Tullis
1164 West 850 North
Centerville, UT
84014

RE: MUR 4208

Dear Mr. Tullis:

On June 25, 1996, the Federal Election Commission found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended. 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 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.

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

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

Respondent: Michael Tullis
1164 West 850 North
Centerville, UT 84014

I. BACKGROUND

This matter was generated by information obtained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities pursuant to the Federal Election Campaign Act of 1971, as amended. 2 U.S.C. § 437g(a)(2). This matter is related to transactions between Michael Tullis and Friends of Bob Bennett Senatorial Campaign Committee f/k/a Bennett for Senate ("the Committee").

II. EXCESSIVE CONTRIBUTIONS

The Act states that 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). Furthermore, no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures. *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 before such expenditures are considered 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 the individual who is not a volunteer, where such expenses are incurred while the individual is traveling on behalf of a candidate or a political committee of a political party. 11 C.F.R. § 116.5(b); *see also*, Explanation and Justification for 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26382-83 (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 a limited exception to the general rules governing contributions for an individual's personal transportation expenses,

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

The referral materials demonstrate that Michael Tullis, the Committee's Custodian of Records, made excessive contributions resulting from the untimely reimbursement of his expenses. *See* Attachment 1 (schedule of contributions). Mr. Tullis made advances through the use of his personal credit card to the Committee for his travel and subsistence expenses, the travel and subsistence expenses of others, campaign office expenses, media expenses, and other miscellaneous items. On June 1, 1992, Mr. Tullis' outstanding credit balance was at its highest level, totaling $22,206.[1] Four charges for newspaper advertising totaling $21,109 and one charge for the purchase of a computer constitute the majority of the $22,206. At the time the audit was conducted, no expense reimbursement requests were outstanding. At the exit conference, Mr. Tullis indicated

[1] The calculation of Mr. Tullis' contributions included an adjustment to recognize his $1,000 contribution limit to the primary campaign. The contributions at issue took place during the primary campaign, thus his general election contribution limit was not applied against the contributions. The $1,000 travel exemption was not credited to the specific contributions made at the highest outstanding balance level because those expenditures were not travel-related.

that he had made an error in judgment in using his personal credit card to pay Committee expenses and that he was unable to demonstrate that he had made no excessive contributions.

The Committee asserted that it reimbursed Mr. Tullis for his expenses before they became contributions under 11 C.F.R. § 116.5(b). The Committee also asserted that the Audit staff incorrectly used the date the expenses were incurred rather than the closing date of the credit card statement on which the charges first appear in evaluating whether the expenses were contributions to the Committee. When such information was available, the Audit Division used the closing date of Mr. Tullis' credit card statement to determine whether his own travel and subsistence expenditures were contributions.

The exemption contained in 11 C.F.R. § 116.5(b) pertains only to expenses paid by an individual by personal credit card for his or her own travel and subsistence. Because Mr. Tullis made expenditures for the travel and subsistence of others, the exemption provided in 11 C.F.R. § 116.5(b) does not apply and these expenditures resulted in contributions to the Committee on the date they were incurred.. In addition, Mr. Tullis paid for his own expenditures with his personal credit card and was not reimbursed for these costs within 60 days, thus his own expenditures were contributions to the Committee. 11 C.F.R. § 116.5(b).

Therefore there is reason to believe that Michael Tullis violated 2 U.S.C. § 441a(1)(A) by making contributions totaling $22,206 in excess of his individual contribution limitation.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 16, 1996

Alan C. Ashton
1028 East 690 South
Orem, UT
84058

RE: MUR 4208

Dear Mr. Ashton:

On June 25, 1996, the Federal Election Commission found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended. 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.

The Commission reminds you that your contributions to the Friends of Bob Bennett Senatorial Campaign Committee constitute a violation of 2 U.S.C. § 441a(a)(1)(A). You should take steps to ensure that you abide by the contribution limitation in the future.

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

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

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

Respondent: Alan C. Ashton
1028 East 690 South
Orem, UT 84058

I. BACKGROUND

This matter was generated by information obtained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities pursuant to the Federal Election Campaign Act of 1971, as amended. 2 U.S.C. § 437g(a)(2). This matter is related to transactions between Alan C. Ashton and Friends of Bob Bennett Senatorial Campaign Committee f/k/a Bennett for Senate ("the Committee").

II. EXCESSIVE CONTRIBUTIONS

The Act states that 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). Furthermore, no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures. *Id.*

Any contribution made by more than one person shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. 11 C.F.R. § 110.1(k). If a contribution made by more than one person does not indicate the amount to be attributed to each contributor, the contribution shall be attributed equally to each contributor. *Id.* If a contribution to a candidate or political committee, either on its face or when aggregated with other contributions from the same contributor, exceeds the limitations on contributions, the treasurer of the recipient political committee may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. *Id.*

A contribution shall be considered to be reattributed to another contributor if: (1) the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution and informs the contributor that he or she may request the return of the excessive portion of the contribution; and (2) within 60 days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended. *Id.*

Contributions which on their face exceed the contribution limitations may be deposited in a campaign depository. 11 C.F.R. § 103.3(b)(3). If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor. *Id.* If a redesignation or reattribution is not obtained, the treasurer shall refund the contribution to the contributor within 60 days of the treasurer's receipt of the

contribution. *Id.* Such contributions shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. 11 C.F.R. § 103.3(b)(4). The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds. *Id.*

The audit materials disclose Alan C. Ashton made excessive contributions totaling $2,250. The Audit Division's examination of the Committee's records did not reveal any evidence of written reattributions or redesignations for the excessive contributions At the time of the audit, none of the excessive contributions had been refunded. The Committee subsequently submitted copies of refund checks for the contributions, however, the refunds were not timely.

It appears that the Committee accepted and Mr. Ashton made excessive contributions. Therefore, there is reason to believe that Alan C. Ashton violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to the Committee

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 15, 1996

SENSITIVE

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Kim Bright-Coleman KBC
Associate General Counsel

Lorenzo Holloway LH
Assistant General Counsel

Peter G. Blumberg PGB
Attorney

SUBJECT: MUR 4208 – Senator Robert F. Bennett and Franklin Quest Co.

On June 25, 1996, the Commission considered the First General Counsel's Report related to an audit referral of Friends of Bob Bennett Senatorial Campaign Committee ("the Committee"). The Office of General Counsel recommended that the Commission find reason to believe that Senator Robert F. Bennett and Franklin Quest Co. violated 2 U.S.C. § 441b. However, the recommendation did not pass on a 2-2 vote. Senator Robert F. Bennett and Franklin Quest Co. were not named in any other recommendation in the report, and therefore, the file should be closed with respect to them. The Commission did not vote on a recommendation to close the file with respect to these two respondents. Therefore, the Office of General Counsel recommends that the Commission close the file for these two respondents.

RECOMMENDATION

Close the file as it pertains to Senator Robert F. Bennett and Franklin Quest Co.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Senator Robert F. Bennett and Franklin Quest Co.	)	MUR 4208
	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on July 18, 1996, the Commission decided by a vote of 5-0 to close the file as it pertains to Senator Robert F. Bennett and Franklin Quest Company, as recommended in the General Counsel's Memorandum dated July 15, 1996.

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

Attest:

7-18-96
Date

Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Mon., July 15, 1996 9:18 a.m.
Circulated to the Commission: Mon., July 15, 1996 11:00 a.m.
Deadline for vote: Thurs., July 18, 1996 4:00 p.m.

bjr

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 24, 1996

The Honorable Robert F. Bennett
United States Senate
431 Dirksen Building
Washington, D.C. 20510-4403

RE: MUR 4208

Dear Senator Bennett:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission considered the issue of whether you violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended, by making contributions to the Friends of Bob Bennett Senatorial Campaign Committee. The issue involved payments from Franklin Quest Corporation, f/k/a Franklin International Institute, Inc. ("Franklin") to you pursuant to a consulting services arrangement and a loan obtained by you from the First National Bank of Layton. On June 25, 1996, the Commission considered the issue but there was an insufficient number of votes to find reason to believe that you violated 2 U.S.C. § 441b. Accordingly, the Commission closed its file in this matter as it pertains to you.

This matter will become part of the public record within 30 days after it has been closed with respect to all other respondents involved. 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 is closed.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Kim Bright-Coleman
Kim Bright-Coleman
Associate General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 24, 1996

Arlen W. Crouch
President
Franklin Quest Co.
2200 Parkway Blvd.
Salt Lake City, UT 84119-2099

RE: MUR 4208

Dear Mr. Crouch:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission considered the issue of whether Franklin Quest Co. ("Franklin") violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended, by making contributions to the Friends of Bob Bennett Senatorial Campaign Committee. The issue involved payments from Franklin to Senator Robert F. Bennett pursuant to a consulting services arrangement and a loan obtained by Senator Bennett from the First National Bank of Layton. On June 25, 1996, the Commission considered the issue but there was an insufficient number of votes to find reason to believe that Franklin violated 2 U.S.C. § 441b. Accordingly, the Commission closed its file in this matter as it pertains to you.

This matter will become part of the public record within 30 days after it has been closed with respect to all other respondents involved. 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 is closed.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Kim Bright-Coleman
Kim Bright-Coleman
Associate General Counsel

WILMER, CUTLER & PICKERING
2445 M STREET, N.W.
WASHINGTON, D.C. 20037-1420
TELEPHONE (202) 663-6000
FACSIMILE (202) 663-6363

WASHINGTON
BALTIMORE
LONDON
BRUSSELS
BERLIN

July 26, 1996

By Hand

Peter Blumberg, Esquire
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4208

Dear Mr. Blumberg:

This is by way of follow-up to our telephone conference on July 25, 1996, regarding our request for an extension of time to respond on behalf of our client, Karen H. Huntsman, to the above-referenced matter.[1/]

Mrs. Huntsman received the Commission's letter dated July 16, 1996, on July 22, 1996. Her response would be due on August 6, 1996. We respectfully request a 20 day extension of the time to respond to August 26, 1996, for the following reasons: Mrs. Huntsman resides in Salt Lake City, Utah. Her distance from Washington, D.C., together with the factors described below, presents logistical problems in our collecting the factual information requested by the Commission. In addition, Mrs. Huntsman's daughter, Jennifer, one of the individuals whose contributions are at issue, is expecting a child some time in the next week or so; another, Mrs. Huntsman's son, James, resides in Texas. The additional time that we have requested is needed to permit us to obtain the relevant information in an orderly way and then present it to the Commission in an organized and responsive manner.

Accordingly, for the good cause demonstrated above, we request that the time to respond to the Commission's letter dated

---

1/ Mrs. Huntsman's completed form designating the undersigned as counsel is enclosed.

July 16, 1996, be extended from August 6, 1996, to August 26, 1996. Your attention to this matter is greatly appreciated.

Sincerely,

Dennis M. Flannery
Margaret Ackerley

Enclosure

STATEMENT OF DESIGNATION OF COUNSEL

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JUL 26 1 54 PM '96

NAME OF COUNSEL: Dennis M. Flannery, Esq.
Margaret Ackerly, Esq.

ADDRESS: Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420

TELEPHONE: (202) 663-6000

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.

July 25, 1996
Date

Karen H. Huntsman
Signature

RESPONDENT'S NAME: Karen H. Huntsman

ADDRESS: 500 Huntsman Way
Salt Lake City, UT 84108

HOME PHONE: (801) 583-5059

BUSINESS PHONE: (801) 532-5200

97043783075

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 31, 1996

VIA FACSIMILE AND FIRST CLASS MAIL

Dennis M. Flannery, Esq.
Margaret Ackerly, Esq.
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420

RE: MUR 4208

Dear Mr. Flannery and Ms. Ackerly:

This is in response to your letter dated July 26, 1996, requesting an extension until August 26, 1996 to respond to the complaint filed in the above-referenced matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on August 26, 1996.

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

Sincerely,

Peter G. Blumberg
Attorney

PGB/zh

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TELEPHONE 011 (49301) 2022-6400
FACSIMILE 011 (49301) 2022-6500

August 26, 1996

BY HAND

Peter Blumberg, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4208 - Karen H. Huntsman

Dear Mr. Blumberg:

This is in response to the Commission's July 16, 1996 reason to believe letter to our client, Karen H. Huntsman, regarding an alleged violation of 2 U.S.C. §441a(a)(1)(A). As set forth in the Commission's letter, the Commission's finding relates to contributions attributed to Mrs. Huntsman and made from accounts for which she was an account custodian. We appreciate the opportunity to respond to the Commission's finding and trust that, after considering this submission, the Commission will take no further action on this matter.

I. Summary

The facts, as set out more fully below and in the enclosed affidavits and accompanying articles and photographs, are briefly stated as follows. Mrs. Huntsman, her husband Jon Huntsman, Sr., and the Huntsman children believe strongly in supporting political candidates who share the family's values. The children whose contributions are the subject of the

Commission's correspondence are the three youngest of the nine Huntsman children. James (born February 7, 1971) and Jennifer (born November 27, 1972) were adults, 21 and 19 years old, respectively, at the time the contributions were made. Mark (born January 20, 1975), who is mentally retarded, was a few months short of 18.

James, Jennifer, and Mark's trust accounts were established in December 1991, well before the contributions, to provide for educational and other expenses as the children entered adulthood. They were not created for the purpose of providing funds for the contributions. Although Mrs. Huntsman served as the custodian for the trust accounts, she routinely kept the children apprised of disbursements and satisfied herself that the disbursements were made with their knowledge and consent. The contributions to the Bennett campaign were made following various family discussions about Mr. Bennett, a neighbor, family friend, and member of the Huntsmans' church, whose political views were similar to the Huntsmans' own. The contributions were in accord with the wishes of each of the children.

As reflected in the Factual and Legal Analysis that accompanied the Commission's letter, all of the contributions at issue have been refunded by the Bennett for Senate Committee. However, as explained below, Mrs. Huntsman was unaware of this until she received the Commission's letter. The refund checks have now been retrieved and cashed. As the trust accounts for

James and Jennifer were closed on December 20, 1995, and July 15, 1994, respectively, the refunds of their contributions have been directed to them in their individual capacities. Mark's trustee account remains in effect and the refund of his contributions has been deposited back into his trust account.

II. Facts

A. Background

The Huntsman family of Salt Lake City, Utah, is well-known for its charitable and humanitarian philanthropy, as well as its involvement in the political arena. As can be seen from the enclosed articles from USA Today, Chemical Week, The Observer and Town and Country (Attachments A, B, C, and D), Jon Huntsman and his family have a deep-seated moral commitment to giving back to the community. They have donated enormous sums of money for myriad causes, including homelessness, environmental concerns, children's hospitals, and cancer research. All nine Huntsman children were raised in an atmosphere in which it was deeply ingrained that one has a responsibility to be aware of national and international issues and to take an active role in donating to worthy causes.

The Huntsman children have been aware from an early age of the importance of public service and political office. In the early 1970's, Mr. Huntsman served as a staff secretary to President Nixon; his eldest son, Jon Jr., has been a staff assistant to President Reagan and the ambassador to Singapore. As the enclosed photographs show, the Huntsman children are no

strangers to the political arena, having scampered around the Oval Office as young children and later having met with various political leaders (Attachments E, F, G, and H). Political issues and campaigns have always been widely discussed in the Huntsman household. Attachment I, Affidavit of Karen Huntsman at ¶ 4; Attachment J, Affidavit of James Huntsman at ¶ 8; Attachment K, Affidavit of Jennifer Parkin (nee Huntsman) at ¶ 7. In 1984, Mr. and Mrs. Huntsman took the family to the Republican National Convention in Dallas. Attachment I, Affidavit of Karen Huntsman at ¶ 4. The senior Huntsmans have supported many candidates over the years whose positions on important issues reflect the Huntsmans' own. As with charitable and humanitarian causes, the children were taught and believe that it is important to give financial support to candidates who share the family's values.

B. The Contributions

In December 1991, Mr. and Mrs. Huntsman established trust accounts in amounts exceeding for each of their three youngest children with the proceeds from certain family businesses. Attachment I, Affidavit of Karen Huntsman at ¶ 6. The money was set aside to provide for the children's needs as they entered adulthood. Signatory power over the accounts was vested in Mrs. Huntsman and certain executives of the Huntsman company. The accounts established for James and Jennifer were closed in December 1995 and July 1994, respectively, and the remaining funds transferred to them. Attachment I, Affidavit of Karen Huntsman at ¶ 7; Attachment J, Affidavit of James Huntsman

at ¶ 6; Attachment K, Affidavit of Jennifer Parkin at ¶ 6. Mark continues to have a trust account in his name. Attachment I, Affidavit of Karen Huntsman at ¶ 8.

Disbursements have been made from these accounts from time to time on the children's behalf, for such things as educational expenses, financial support during religious missions, taxes, and investments. Mrs. Huntsman has routinely endeavored to keep the children apprised of disbursements and to satisfy herself that the disbursements were made with their knowledge and consent. Attachment I, Affidavit of Karen Huntsman at ¶ 9.

Turning specifically to the contributions to the Bennett for Senate Campaign, Mr. Bennett is a neighbor of the Huntsmans', a member of their church, and a family friend. Attachment I, Affidavit of Karen Huntsman at ¶ 10; Attachment J, Affidavit of James Huntsman at ¶ 10; Attachment K, Affidavit of Jennifer Parkin at ¶ 9; Attachment L, Affidavit of Mark Huntsman at ¶ 4. Mr. and Mrs. Huntsman discussed Mr. Bennett's 1992 candidacy and support of his campaign with James, Jennifer and Mark. Attachment I, Affidavit of Karen Huntsman at ¶ 10; Attachment J, Affidavit of James Huntsman at ¶¶ 10, 11; Attachment K, Affidavit of Jennifer Parkin at ¶ 10. All three children knew Mr. Bennett and wished to contribute to his campaign. James, then 21, and Jennifer, then 19, supported Mr. Bennett and wanted to see him elected. Attachment J, Affidavit of James Huntsman at ¶¶ 10, 11; Attachment K, Affidavit of

Jennifer Parkin at ¶ 9. In Mark's case, Mr. and Mrs. Huntsman have always tried to treat him to the maximum extent possible as they do their other children. Although Mark is mentally retarded, he can express his thoughts and wishes, which his parents encourage him to do. He is included as much as possible in the family's discussions and activities. Attachment I, Affidavit of Karen Huntsman at ¶ 5. Mark wanted to help Mr. Bennett, whom he considers a friend. Attachment L, Affidavit of Mark Huntsman at ¶ 4. Mrs. Huntsman understood that Mark wanted to give Mr. Bennett the same type of support as James and Jennifer. Attachment I, Affidavit of Karen Huntsman at ¶ 11. Mrs. Huntsman wrote out the checks for Mark's contribution. Michael Smith, the Huntsman family accountant, signed the checks for James' and Jennifer's contributions. Mr. Smith sent the checks to the Bennett campaign.

Mrs. Huntsman did not know until she received the Commission's reason to believe letter that in 1994 the Bennett campaign had refunded the trust account contributions. Attachment I, Affidavit of Karen Huntsman at ¶ 12. The refunds had been sent to a Huntsman business address, where an employee of the company put them away in a file for safekeeping without notifying Mrs. Huntsman. After Mrs. Huntsman became aware of the refunds through the reason to believe letter, the cashiers checks were located and presented to the bank upon which they had been drawn. The bank honored the checks, and Mrs. Huntsman directed $2,000 each to James and Jennifer and deposited $2,000 back into

the trust account for Mark. Attachment I, Affidavit of Karen Huntsman at ¶ 14.

III. Argument

Mrs. Huntsman lawfully contributed a total of $2,000 to the Bennett for Senate campaign -- $1,000 for the primary election and $1,000 for the general election. 2 U.S.C. §§441a(a)(1)(A); 11 C.F.R. §110.1(b). Although her name appeared on the checks drawn on the trust accounts for James, Jennifer, and Mark, these were the children's contributions, not hers.

A. James and Jennifer were not minors when they contributed to the Bennett campaign

Of the three Huntsman children whose contributions are at issue, only Mark was a minor as of October 2, 1992, the date the contributions were made, and he just barely so -- Mark was born on January 20, 1975, and was therefore fewer than 4 months shy of his 18th birthday at the time he contributed to the Bennett campaign. James, born February 7, 1971, and Jennifer, born November 27, 1972, were 21 and 19, respectively, when they contributed to the Bennett campaign. As demonstrated by their affidavits, James and Jennifer made the contributions knowingly and voluntarily as informed adults.

B. The regulations governing contributions by minors apply only to Mark; but even if applied to James and Jennifer, as well, the factors set forth clearly indicate that the contributions are properly those of the Huntsman children, and not Mrs. Huntsman

The regulations governing contributions by minors are inapposite to the contributions made by James and Jennifer and

apply only to Mark's contributions. However, the three conditions set out at 11 C.F.R. §110.1(i)(2) -- (1) that the decision to contribute is made knowingly and voluntarily by the child; (2) that the funds are owned or controlled by the child, such as with the proceeds of a trust for which the child is the beneficiary; and (3) that the contribution not be made from the proceeds of a gift given for the purpose of providing funds for political contributions -- were, in any event, all met for each child.

With respect to the first factor, Mr. and Mrs. Huntsman discussed the Bennett candidacy with James, Jennifer, and Mark and all three approved of the contributions. As previously stated, James and Jennifer each contributed to the Bennett campaign knowingly and voluntarily as informed adults.[1/] Mark had his own reasons for contributing to the Bennett campaign. His decision to contribute was not based on Mr. Bennett's political views; but there is, of course, no requirement that it would have to be for the contribution to have been made knowingly and voluntarily. Mark knows and likes Mr. Bennett and wanted to give him the same type of support as James and Jennifer. As to the second factor, the regulations require that the funds be owned or controlled by the minor. Each child was the sole beneficiary of the trust account in his or her name. Although

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1/ Indeed, as Jennifer avers in her affidavit, she declined to make a contribution to the campaign of Enid Greene, even though Jennifer's parents had asked her to consider doing so. (Attachment L, Affidavit of Jennifer Parkin at ¶ 11).

the accounts were created in trust for the children, the money was theirs, to be used for their benefit, and, indeed, the funds remaining in the accounts were turned over to the elder children when the purposes for which the accounts had been established were satisfied. Finally, the accounts were established well before the contributions and were not created for the purpose of providing funds for them.

C. The Commission should take no further action in this case consistent with its disposition of similar MURs

James and Jennifer were not minors at the time the contributions were made, and it has been clearly established that they made the contributions of their own accord with funds owned by them. As in other cases in which the Commission has pursued possible violations of the Federal Election Campaign Act by parents in connection with contributions by their children who, in fact, were adults who made contributions knowingly and voluntarily, the Commission here should take no further action with regard to James and Jennifer's contributions. See, e.g., MUR 488; MUR 4253; MUR 4254. As to Mark's contributions, his involvement in and consent to the contributions made from his trust account are sufficient to establish that the contributions were his. The Commission has recognized in other cases that a child in a politically active and aware family can be capable of knowing and voluntary contributions even when his or her age (or, by logical extension, level of mental functioning) might alone suggest otherwise. See, e.g., MUR 4252. Unlike some of the

inquiries the Commission has undertaken previously in which the minor children were clearly unable to form the requisite intent to make political contributions of their own accord, such as MUR 4255, in which the children were only one and three years old, Mark Huntsman was able to do so.[2] Accordingly, the contributions from Mark's trust account, just as those from James and Jennifer's, should not be attributed to Mrs. Huntsman.

IV. Conclusion

For all the reasons set forth above, the Commission should take no further action and close the file on this matter.

Sincerely,

Dennis M. Flannery
Margaret L. Ackerley

Counsel for Respondent,
Karen H. Huntsman

Enclosures

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[2] We note here that the Commission took no further action regarding the contributions by the infant children in MUR 4255.

Attachment A

MONDAY, OCTOBER 2, 1995

THE NATION'S NEWSPAPER

USA TODAY

NO. 1 IN THE USA

BILLIONAIRE GIVES $100M FOR CANCER RESEARCH 1D

HUNTSMAN FAMILY PUTTING MORMON FAITH TO WORK IN FINANCING SEARCH FOR CURE

STOCK MUTUAL FUNDS FINISH A GOOD QUARTER 3B

▶ MONDAY REPORT, 3,4,6,9B

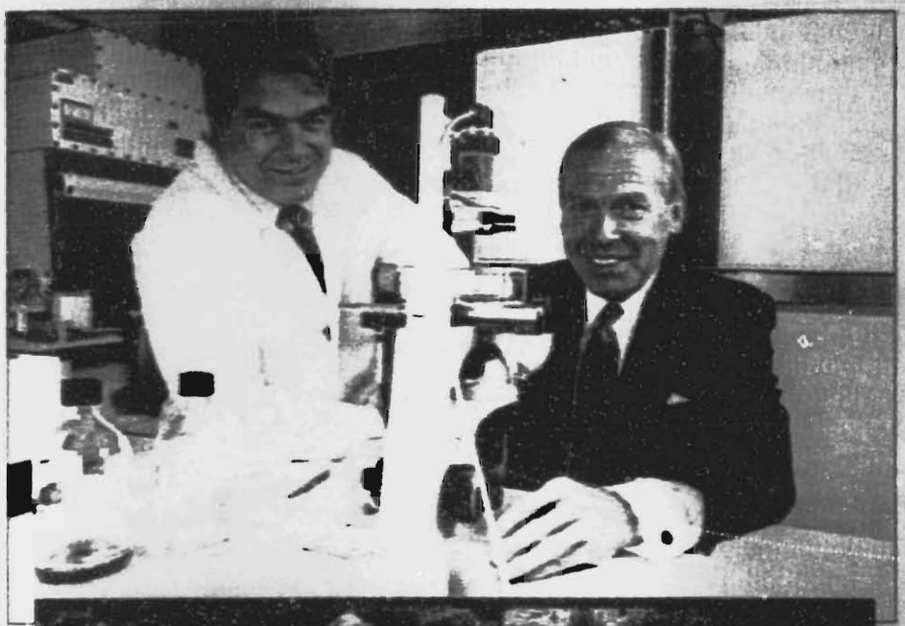
MONDAY

By Jeff Alred

JON HUNTSMAN: Donation is 'seed money,' 1D

Hunting a cancer cure

Billionaire funds high-tech genetic research



Top by Jeff Allred, USA TODAY; above by Kent Miles

MAN WITH A MISSION: Geneticist Dr. Raymond White, top left, will direct cancer research at the University of Utah funded with $100 million from Jon M. Huntsman, right. Huntsman, above with his family, survived two bouts with cancer and believes breakthroughs are near.

Tracing clues to disease in the family tree

A onetime potato picker believes his wealth should go back into community

By Anita Manning
USA TODAY

Take wheelbarrows full of money and a man with a dream, and what do you get?

Maybe a cure for cancer.

That's the goal of billionaire businessman Jon M. Huntsman and wife Karen of Salt Lake City, who today announce their donation of $100 million to the Huntsman Cancer Institute at the University of Utah. The Huntsmans believe it is the largest cash contribution ever for medical research.

The money will be used to buy high-tech lab equipment, set up clinics and attract the world's greatest medical minds to the Utah center, where, under the direction of geneticist Dr. Raymond White, the focus will be on finding the genetic origins of cancer.

White, highly respected for his research into gene mapping and identification of inherited cancer genes, sees this as the chance of a lifetime. "Utah has really become a world center for this kind of human genetics activity," he says. "A lot has to do with the focus created by the medical center here, but beyond that, there is a kind of natural resource opportunity for human genetics to be found in the Utah families."

Many Utah families, especially Mormon families like Huntsman's, are large. And Mormons keep great family records. The Church of Jesus Christ of Latter-day Saints maintains the Family History Library, the largest genealogical library in the world, in Salt Lake City.

"Our gene-identification technologies depend on being able to follow the damaged gene, the one causing disease, through multigenerational families," White says.

Researchers will locate families in which cancer occurs through a state tumor registry, to which doctors report all cases. Then, with a family's permission, they'll gather more information on family members, including the vital statistics — birth and death dates, marriage and childbirth dates — listed in the library.

The library is not directly involved with the cancer institute, and researchers have no special access to information not publicly available. But proximity to the library and to large families in which most people don't smoke is, for people seeking the genetic causes of cancer, a real plus.

"The larger the family, the more effective our research is, the more we're able to capture these genes as they sift through the families," says White. "Large families are part of the culture here. Utah still has a birth rate significantly higher than the national average. A generation ago, families with eight or 10 kids were quite common and they're still fairly common. It's enormously helpful for the geneticist tracking the gene."

For Huntsman, the donation, which he calls "only seed money," is just one of many ways in which he and his family have tried to live by their values.

He and his wife have taught their six sons and three daughters that "not only must they serve the family business but they must serve the nation and the church," he said in an exclusive interview with USA TODAY. "It's an element of culture in our family. A day doesn't go by that it isn't discussed." He's already given $100 million, he says, to programs for the homeless, Armenian earthquake relief and environmental research projects.

"We couldn't live and be honest with ourselves without having that" habit of charity, he says. "It's not optional, it's a duty. If we're blessed with money, it's our duty to put it back into the community."

This is the way he talks. And he seems to mean it.

Huntsman could be a poster boy for old-fashioned family values. He grew up in what he describes as a "humble and modest home" in Blackfoot, Idaho, the second of three sons of a schoolteacher and his wife. He went, on scholarship, to the University of Pennsylva-

nia's Wharton School of Business, showing up there in a silver $29 J.C. Penney suit that "glowed in the dark. I kept wondering why everyone was smiling at me."

After college and a stint in the Navy, he married his childhood sweetheart and went to work for an egg distribution company in Los Angeles. "We came up with the fact that we needed a better, more efficient way of selling eggs rather than in pulp cardboard containers," he says. So, with help from backers, he developed the plastic egg carton, worked for a company that produced it, then struck out on his own 25 years ago and launched a small plastics plant in Fullerton, Calif.

His first product? The Big Mac burger box for McDonald's. Bingo. Next came plastic bowls and plates for hospital use, then dozens of other products used every day all over the world. His companies in 23 countries are expected to earn $4.3 billion this year.

The story seems wondrous, even to him. "I never dreamed that I would be in this position financially someday, nor did our family ever expect it, nor do I think, frankly, that we deserve it," he says. "But it's unfolded in such an incredible way, I feel maybe the good Lord intended me to utilize it for the betterment of humankind. There's no better explanation for someone to have picked potatoes as a kid and suddenly have a $4- to $5-billion company in one lifetime."

He has refused to sell or let his businesses go public, preferring to keep it in the family. All the sons and sons-in-law either work in the family business or are preparing to do so, with the exception of youngest son Mark, 20, who is mentally handicapped.

Huntsman speaks with paternal affection of his 10,000 employees, some of whom are set to be at today's ceremony on the site where the new cancer institute building will be constructed with the Huntsman contribution and $51 million more from other donors.

"The problem we've had with going public or selling our companies is that we do love our people," he says. "I know it's against the law, but I do hug them. We're like a family."

Family, in case the point has been missed, is important, Huntsman says. And it may provide a clue to his drive for a cure for cancer. His adored mother "died in my arms with breast cancer," he says, after "she drifted down to a skeleton of herself. And my dad suffered through prostate cancer in the later part of his life." Huntsman, too, had prostate cancer in 1992, then cancer of the mouth in 1993. Cancer, he says, is a "ruthless" disease.

"For instance, the prostate cancer that my father had and that I had is a horrible operation for a man. Yet men never talk about it. They try to be macho, yet way down deep they're crying inside."

Now, he says, "We're right around the corner in eradicating it, without causing the human body to take such a beating. You can feel it."

He thinks the time is right. "Between the genealogical records we have available, the scientists we have and the breakthroughs that have happened in the last five years, add these together and I believe, I'm willing to bank everything we have on it, that we will make breakthroughs in the next five years."

Huntsman has learned to trust his hunches. "In our chemistry business, I could sense in the '80s and the '90s we were on the threshold." And in the early days, he says, financial wizards advised him against putting all he had into new products. "They said, 'Don't do that. You'll go broke.' I said, 'We're going for the roses.'

"And now," says Huntsman, "we're going for the roses in cancer."

Attachment B

chemical

viewpoint

Chemical Dynasties

FOUNDING DYNASTIES MUST DATE BACK AS LONG AS MANKIND. LOOK AT HOMER, THE BIBLE. IF IT'S NOT CENTRAL IN THE PLAYS OF AESCHYLUS, it certainly is in Shakespeare.

This has been a week for chemical dynasties to make the news. In the lurid media coverage of the tragedy at John DuPont's Newtown Square, PA estate, the death of Herbert H. Dow may have gone unnoticed. Dow, 68, was a grandson of Dow Chemical founder Herbert Henry Dow, an heir to the Dow fortune, and a board member of the company for nearly 40 years. An MIT graduate, he joined Dow in 1952, was corporate secretary from 1968 to 1986, and was a v.p. from 1986 until 1992, when he retired. It may not have been as illustrious a career as that of his cousin, Herbert (Ted) Dow Doan, who served as president and CEO until 1970 and remained active in the company until his retirement in 1987, but a worthy career, nonetheless.

One of the characteristics that distinguishes the chemical industry is the large number of family-held firms that are important operators in the industry, particularly in the U.S., certainly more so than in steel, paper, petroleum, and even automobiles.

Figuring out why that is the case is worthy of a major study, but a few reasons seem obvious based on anecdotal observation. One is that the chemical industry is still a young industry, with many firms founded in the immediate post World War II era, when the enormous opportunities in organic chemicals and plastics were starting to be seen. In that youthful era, there was plenty of opportunity for entrepreneurs with relatively little capital to establish successful businesses.

Many of those firms have stayed small, but many have been very successful. We have profiled a broad section of them in the Companies section of *CW* and in our annual Hot Prospects feature. More than a few have made it to the big leagues—the Gottwalds with Ethyl and Albemarle, the Wishnicks with Witco, Norman Alexander with his ownership of Ampacet and Sequa, the Wangs with Formosa, and W. R. Grace. It does not take long to prepare a lengthy list.

After the surge of energy driven by the founder, some dynasties falter, others seed several generations—in spite of inheritance disincentives in the tax code. At Solvay, for instance, current chairman Daniel Janssen is a direct descendant of founder Ernest Solvay. Others sell out to larger players: John Polite's Essex sold to Dow, Henry Barbanel's Sanncor sold to BFGoodrich, William Huisking sold Glyco to Lonza. The examples are legion.

All of which makes recent events at Huntsman the more interesting. The Huntsman group is already a giant, with sales of $4.5 billion in 1995, and as Jon Huntsman himself has frequently stated, the issue of the approach to succession is difficult but pressing. This week (*p. 16*), we carry details of the structure of the new Huntsman Corp. (which we exclusively previewed two weeks ago), which puts management of the company almost exclusively in the hands of Huntsman's sons and sons-in-law. And on page 42 we profile Huntsman himself, who for all his self-deprecating charm, is an epic figure of the contemporary chemical industry.

—DAVID HUNTER

companies, management people

People: Jon M. Huntsman

Blending Business and Benevolence

IT IS HARD TO IMAGINE MAKING $100 MILLION, MUCH LESS GIVing it away, but not for Jon M. Huntsman. That is how much he gave last year to cancer research—the largest contribution ever made to medical study. But it was a typical move by Huntsman, who after 25 years at the helm of his own chemical company, has seen his appetite to make money surpassed only by his desire to donate it to good causes.

"We already have a comfortable living for ourselves," Huntsman says—something of an understatement from the patriarch of a $4.5-billion/year chemical empire. "We decided that the profits of our chemical business would be directed toward charitable and humanitarian efforts, with the particular aim of helping those who suffer."

He has toyed with the idea of an initial public offering (IPO), with the proceeds to be used to set up a foundation. However, Huntsman has not been comfortable with his first flirtation with public disclosure, related to the offering of mortgage notes for the acquisition of Texaco Chemical. The company has instead become even more "private," buying out its public shareholders and buying back its public debt.

Huntsman even considered selling his business last year, having received a $4.5-billion offer from the U.K.'s Hanson Group that would have netted the family $3 billion. "There were superb synergies, but I don't believe the timing was right," Huntsman says. While succession issues mean he will have to consider a sale or an IPO, at the moment he is in no hurry to make a decision.

"We are not going to rush to sell any businesses or have an IPO to raise cash, as we have been able to increase our giving rather dramatically through earnings," Huntsman says. "We have set three main priorities for Huntsman Corp: First is repayment of debt. Second is installation of new equipment for safety and modernization. Third is to make substantial charitable contributions."

Such bounty is a far cry from Huntsman's upbringing in a two-room house in Blackfoot, ID, where his father was a music teacher. "I never expected that I could ever own the remarkable businesses we have today," Huntsman says. "I view our position as being the temporary stewards of a vast amount of wealth. Our job is to see that it is properly redistributed."

Making charitable donations "has always been part of our culture," says Huntsman, a devout member of the Mormon church, which requires members to tithe their incomes. Even as a Navy officer in his 20s earning $220/month, Huntsman gave $50/month to Navy charities. "We are fortunate now in being able to give away much more. It's not just a great honor, it's our duty."

Huntsman is himself a cancer survivor, and cancer research is one of his principal causes. His latest donation will fund a research unit at the University of Utah. Huntsman's philanthropy has included helping to rebuild Armenia after an earthquake in 1988, as well as helping the homeless, sick, and underprivileged. His generosity has led to awards from the National Conference of Christians and Jews and the Catholic Church.

One of the major influences on Huntsman was another Mormon family, the Marriotts. The elder J.W. Marriott was a mentor and a major influence in the early days of Huntsman Chemical. His son J.W. (Bill) Marriott Jr., who now heads the Marriott hotel chain, is Huntsman's best friend; their families vacation together in Arizona.

"Jon has a great ability with people, and he was always very generous—long before he started up his chemical businesses," Marriott says. "He has a good sense of humor and is a great inspiration to his employees. Above all, he is a great salesman—I think he could sell pretty much anything to make money. But where he stands out is in his willingness to share his good fortune with others."

Huntsman: Private business, public good.

A savvy salesman maybe, but Huntsman also brings his moral beliefs to the chemical business. He has backed away from ventures in certain Asian countries where there was a whiff of corruption. He recently took Sterling Chemicals to court after alleging Sterling reneged on a verbal contract. He always tells his salespeople, "Your word is my bond," and he takes it seriously.

Huntsman's entrepreneurial skills were first demonstrated when he worked in an egg-distribution business, where he noticed that cardboard containers often tore and leaked. He developed a polystyrene (PS) carton that was marketed in a joint venture with Dow Chemical. Later, he went off on his own, forming Huntsman Container, inventor of the clamshell container used for many years by McDonald's.

Huntsman's business skills have earned him the respect of his industry peers. "Jon Huntsman brings a uniquely personal approach to business," says Dow chairman Frank Popoff. "He is a throwback to the days when it was how you achieved success that was as important as the success itself." While much is made of Huntsman's equity being family held, rather than publicly held, Popoff says, "What's important is that he's an outstanding manager."

Having digested several major chemical acquisitions in the past two years, including Texaco Chemical and major slices of Monsanto's chemical business, Huntsman's appetite for dealmaking appears to be undiminished. With so much of his business now in commodity surfactants, he is rumored to be considering an acquisition in specialty surfactants. "Acquisitions are very critical to us, and we will continue to provide funds where opportunities arise," he says.

Huntsman is known for his expertise in sniffing out opportunity.

"Jon Huntsman is an expert bottom feeder—he knows when a good business has gone through a downcycle and lost some of its glow," says Robert D. Potter, executive v.p. at Monsanto, who negotiated the sale of two major businesses to Huntsman. "He is not a 'takeover' person in the usual sense—he buys quality assets and obtains the support of the employees."

Such megadeals are a long way from the beginning of Huntsman's own business. "It was pretty difficult starting from zero and having mortgaged our house," he says. "In our first 17-18 years of operation, we did well just to stay alive." The low point was reached during the 1973 oil crisis, when the fledgling packaging company was hit by rocketing prices for PS.

"We were close to bankruptcy. We were living on airplanes, traveling around bartering chemical products for PS. We couldn't even spell their names, let alone pronounce them." But handling those chemicals was a "blessing in disguise," being the genesis of Huntsman's chemical business: it ended up with Huntsman buying a PS business from Shell and eventually building up a major petrochemicals business.

Huntsman's independence allows him a unique approach to running a business. He prides himself on continually lowering operating costs and privately regards even downsized organizations such as DuPont and Dow as "a bit too fat"—though he is loath to fire anyone. He hates to build capacity when he can buy it "for half the price," and he enjoys the freedom from a board of directors and quarterly results that has enabled him to jump at opportunities.

"What differentiates Jon Huntsman from other chemical CEOs is that he doesn't have a strategic plan," says Ron Rasband, former president of Huntsman Chemical. "The key to his success is his willingness to be flexible. Something arises, an opportunity or a crisis, and he's able to respond immediately. He doesn't have to worry that the stock price is going to be affected."

Many of those decisions are made at the dinner table. Huntsman's wife, Karen, is a v.p. and board member, and all six sons have positions within Huntsman Corp. Richard Durham, president and CFO, and Jim Huffman, director of new product development in the packaging group, are sons-in-law.

"The juniors have been involved in the business since childhood. We all work together, and we play together," Huntsman says. The Huntsman organization "never leaves our discussion." That leaves little time for outside interests. At the last family vacation in Hawaii, Huntsman says, various family members spent "at least six or seven hours a day on the phone dealing with business issues."

The family also has a considerable Republican political pedigree. Huntsman was staff secretary to President Richard Nixon in the early 1970s. Jon Jr., now vice chairman of the company, was only 22 when he became a staff assistant to President Ronald Reagan; he later served as ambassador to Singapore.

Today, Huntsman Sr. is something of an ambassador for the chemical industry and a tireless advocate of chemical products. An economist by education, he admits to being "a poor science student," one reason perhaps for putting a museum of the chemical industry at his new corporate headquarters that features exhibits on the origin and uses of petrochemicals.

Huntsman's commitment to his family, his church, his company, and his industry leave him little time to indulge in hobbies, save for helping his son Mark amass a formidable collection of antique cars. He is not a golf lover but is a big basketball fan. He can even boast of a basketball record from the University of Pennsylvania to complement his roster of industry awards: "I was the lowest-ever scorer."

—ANDREW WOOD

PERSONAL INFORMATION

JON M. HUNTSMAN Chairman and CEO HUNTSMAN CORP.

Born Blackfoot, ID 1937

Education BS Economics, Wharton School, University of Pennsylvania; MBA, University of Southern California

Home Salt Lake City

Interests Family, business, church, philanthropy

Last book read *Barbarians at the Gate*, by Bryan Burrough.

Last vacation Hawaii

Car Range Rover

Family Wife, Karen; Children, Jon Jr., 35; Peter, 32; Christina, 31; Kathleen, 30; David, 28; Paul, 26; James, 24; Jennifer, 23; Mark, 21.

HUNTSMAN

500 Huntsman Way
Salt Lake City, Utah 84108

Attachment C

THE OBSERVER
MAGAZINE
OCTOBER 1993

Beckett in Bosnia

Susan Sontag's own story of a controversial production

MADE OF MONEY

Billionaire Jon Huntsman and his cancer cure

BY ANDREW DAVIDSON

WHO NEEDS MARRIAGE?

An institution that is to be avoided at all costs

BY LUCY ELLMANN

Billion

JON HUNTSMAN saw the future long ago and it was spelt 'plastic'. His foresight paid off. Eat fish and chips from a polystyrene tray in Britain, plug in a Black & Decker appliance in the US, drink champagne from an Aeroflot beaker in Russia or use a phone or a fridge in Australia, and you'll probably be contributing to his profits.

Now a rich man, with a $3 billion petrochemical empire that spans the world, a political man, whose generosity props up Republican and Democratic candidates alike in America, and a religious man – he is one of the most powerful Mormons in America – he has a new goal: to find a cure for cancer.

'Andrew,' he says to me, leaning across the aisle of his Gulfstream 4 jet, somewhere over the English Channel, 'I have three principal focuses outside my faith – my family, my business and the fact that I am now going to do everything in my power to raise the money to find that cure for cancer. I think we are right around the corner from it. With more money and the right researchers and conditions, we are going to find it. If my businesses have to grow to get the resources to devote to it, then so be it.'

At times, speaking about the disease, his blue eyes look tired, his face far older than in even recent hand-out photos. For his interest in cancer is more than just philanthropic. Huntsman, a bulky, sandy-haired 56-year-old, was operated on for cancer of the prostate last year. He also has cancer of the mouth, which he expects to be operated on next year. You can see him chew the inside of his lip with anxiety as he explains.

So perhaps in consequence of all this, perhaps

WORLD POCKET: Jon Huntsman travels the world, a city a day, in his private jet. His group operates in 15 countries

PHOTOGRAPHS BY JONATHAN OLLEY

LOW KEY: the plastics king stays in modest hotel suites. His private plane too is surprisingly unplush

dollar giveaway

Philanthropist Jon Huntsman gave the world the polystyrene burger container. But can the multi-millionaire buy a cure for his own cancer?

ANDREW DAVIDSON

not, he has recently pushed his group of petrochemical companies into an astonishing acquisition drive, teaming up with an unlikely ally, Kerry Packer, the rumbustious Australian tycoon, to buy companies and plants and expand production all over the world. Plastic chairs, plastic cups, packaging, shrink film, car parts, crash helmets, building products, mouldings for office and household goods. PVC, polyethylene, polypropylene, polystyrene, polyester resins, styrene monomer – petrochemicals girdle the globe and Huntsman has a stake in all the key niche markets, making his corporation the biggest privately owned petrochemical group in America. Rivals rate his operation a very shrewdly run outfit indeed.

There is more. Huntsman, a formerly staunch Republican who now admits to backing candidates of all hues "if he likes what they stand for", an aide, spent a brief stint as special assistant to Richard Nixon in Nixon's pre-Watergate years, and played a part in the Reagan and Bush election campaigns. But because of his wealth, he lives behind hi-tech security in Salt Lake City after repeated threats to his family and a botched kidnap attempt on one of his nine children three years ago. He still travels the world freely by private jet, a city a day, checking his new acquisitions, personally wishing his 10,000 or so employees "Happy Christmas" every winter. And he gives much of his money away.

In September he established a new cancer research centre in his home state of Utah with a $10 million gift. Later this year he plans to buy a fast-growing medical technology company and simply give it to the centre as a cash cow, an experiment in the merging of public and private, which he says has never been done before. He has also pledged to raise another $90 million for the project by the end of the decade.

Cynics, of course, would say that he is just a rich man trying to find a cure for his own disease. But it's more than that. The disease killed his mother, whom he adored, herself a devout Mormon and former missionary for the church, 22 years ago. Those looking for sentimental clues to his motivation are frequently directed to her tombstone in a cemetery in Fillmore, Utah, a small town 150 miles south of Salt Lake City. On it he had inscribed a line from *As You Like It*: "Sweet are the uses of adversity."

Anyway, he explains with a shrug, he had given away $80 million even before he found he had cancer: there have been huge donations to charities for the homeless, committed involvement in environmental projects (the Huntsman Environmental Research Unit at Utah State University), community action (the Huntsman Awards for Excellence in Education) and business studies (the Huntsman Center for Global Competition and Innovation at the University of Pennsylvania), not to mention a Huntsman-instigated rebuilding programme in earthquake-shattered Armenia, and that's on top of the annual tithe of his vast income that goes to the Mormon church. No, he says, he has been giving for years. If it wasn't cancer, he would focus on something else.

He is, by any estimate, one of America's more remarkable business leaders. But for outsiders, there appear to be some pretty big contradictions here. God and Mammon, petrochemicals and eco-concerns, politics of the right and the left, the squidgeon of ego in all that philanthropy. Huntsman this. Huntsman that.

How on earth, you might ask, does he square the circle?

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"Blackfoot," says Jon Huntsman with mock-seriousness in his deep mid-western accent, "is the home of the south-eastern Idaho state fair." A wry smile plays on his lips. His travelling companions, Jim and Don, are trying hard to suppress a fit of the giggles.

Hey, I feel like shouting. Mormons are not allowed to take the Mickey. Five of us are cramped, arms over legs, knees under chins, in a small limo en route for the jet at Heathrow – we are off to Paris, the only time Huntsman can fit me into his city-hopping schedule. The jokes are all about how the company, Huntsman Chemical Corporation, is cutting back on expenses. Until, that is, I ask him about his upbringing in rural Idaho, "heart of the potato industry".

Jim and Don, the gigglers, occasionally cast anxious glances at the boss. The impression is that they are enjoying themselves because he is in the mood for it. Jim (James N. Kimball, director of media relations, tall, balding, currently working on a biography of Huntsman) wears tracksuit trousers and pumps, and frequently sends himself up for Huntsman's benefit. Don (Don H. Olsen, senior vice-president, public and environmental affairs, former TV anchor man with an anchor man's good looks) watches over the interview nervously.

The Huntsman story is one of graft rewarded. Born the second of three sons to a Fillmore music teacher, he was brought up first in Blackfoot, across the border, then in Palo Alto, California. It was not a particularly religious upbringing. Although both parents were descended from the pioneer families who had made the great trek to Utah, his father was an inactive Mormon. His middle son, however, was closer to his mother, and rarely missed a meeting, often hitchhiking miles to get there. By the time Jon Huntsman was 12 his father had gone back to college to get his doctorate in education. With no money coming in, the elder Huntsman boys were sent out to work after school, dishwashing, cleaning, working in the local stores.

His school work never suffered. He won a scholarship from the Crown Zellerbach paper business to go to the Wharton Business School in Pennsylvania, then the only undergraduate business school in America and very Ivy League. He left school for a commission in the navy as a gunnery officer, married his childhood sweetheart Karen, and finally ended up at Crown Zellerbach. There he was called aside by Mr Zellerbach himself. According to Huntsman the conversation went like this: "Jon," said Mr Zellerbach, "we have watched you in your undergraduate years and your years as a naval officer and we have got a position in this company for you. Here is where you will be in five years, in 10 years, and in 20 years. But you are a natural born entrepreneur [Huntsman pronounces it *entrurpreneur*]. You will be miserable in a big company. Nevertheless, if you want it, you can have this job."

Huntsman thought it was just his way of getting rid of him. So he left and worked with his wife's uncles at their egg distribution company. The high flyer from Wharton hated it. By 26, he was vice-president of the company and had handled enough eggs to not care if he ever saw another one. Just one thing intrigued him: developing a plastic egg carton. The manufacturers of cardboard cartons had a virtual monopoly and, anyway, cardboard leaked. He set about producing a plastic version. That side of the business took off and in 1965 it was merged with the now-giant Dow Chemical. Huntsman was made president of the division. Within a few years, however, he had resigned. "I told them I had to start my own company. Plastics was going to be very important, and I needed my freedom."

So, after a brief diversion, he set up his own company with $1.3 million, built up a huge plastics business in the Seventies – developing the famous McDonald's clamshell burger container along the way – and sold out for $34 million at the end of the decade. Two years later, after a stint running the Mormon mission in Washington state, he started all over again and was even more successful. By last year he had built up a $1.8 billion group operating in 14 countries. Now, in a flurry of activity this year, he has nearly doubled it in revenue size and expanded into 18 countries.

He has one wife, Karen, who sits as a director on his companies, nine children – the joke in the petrochemical industry is that he has to expand his companies to find jobs for them all – and a reputation for working non-stop. When Kerry Packer, his partner in a new petrochemical joint venture, suggested, "Why don't you come and learn a little polo, Jon?", he demurred. He only enjoys business.

Those who have done business with him have often been bowled over, both by his personality and by the way he never proselytises his deeply held religious beliefs. "He is totally charming," says Sir John Collins, chairman of Shell UK, who sold him part of his English operation. "He is a very straightforward, very determined guy," says Bob Reid, boss of British Rail and a former Shell chief executive. The key to his success, says Reid, is that he concentrates on niche markets where there is a large demand for an end product. His "flexibility", a sort of American everyone-mucks-in attitude, caused some eyebrow-raising with the British unions – he runs plants in Carrington and soon, after his latest deal to buy a chunk of Texaco, in Llanelli – but the Huntsman style rubbed off.

Reid's only complaint was the Huntsman Christmas cards, huge family photos of fresh-faced American youth that continually expanded to fit in an ever-growing group of husbands, wives and babies. "My wife said if his family got any bigger we'd have to get a new mantelpiece."

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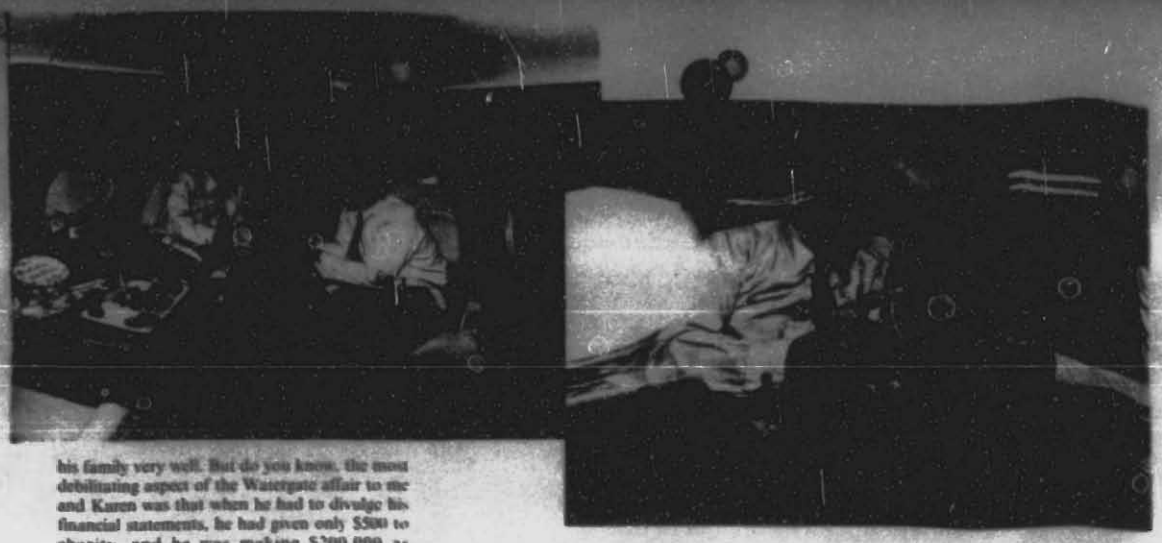
The cloud over the inexorable rise of Jon Huntsman is, of course, Watergate. It doesn't take long to get on to the subject. He has been trying to explain his philanthropy – he believes that people should "put back" as much as they "take out" of society – while we pull into the car park for the executive jet departure lounge at Heathrow. The lounge looks more like a well-upholstered Nissen hut. We are swiftly waved through on to the Tarmac. Huntsman has already reached the subject of Richard Nixon.

"I worked with Richard Nixon as his staff secretary. Every morning I was responsible for the ingress and egress of his office, and I got know



his family very well. But do you know, the most debilitating aspect of the Watergate affair to me and Karen was that when he had to divulge his financial statements, he had given only $500 to charity, and he was making $200,000 as President plus another $200,000 from outside sources! No matter what he did at Watergate and a lot of that was nonsense and politics and business as usual in Washington – to contribute only $500 to charity was to me a far more demeaning aspect.'

For all the flak that followed Watergate it is plain he regards Nixon with affection. He still wears the President's Office cuff links, chunky round baubles with a white eagle on blue, and he says he was proud to be able to take 'three generations of Huntsmans' to the recent funeral of Nixon's wife Pat.

And Watergate? All Huntsman will say is that 'gross mistakes' were made by a handful of people. 'A small band were amoral and I really think they thought they were above the law, and Nixon seemed to feed into that far more than the George Bushes of this world.'

Huntsman left the White House to go back into business months before Watergate broke, was never summoned before the hearings, and argues strongly to this day that he knew nothing about secret taping systems and break-ins. He was, however, sounded out about appearing before the hearings but, he says, after he listed the things he wanted to tell the hearings about the previous President, Lyndon Johnson – that he had discovered that 24 TV sets had gone 'missing' from the White House and ended up at the LBJ ranch, that $50,000-worth of gold-embossed stationery for LBJ's daughters had been billed to the White House after he resigned, likewise a $5 million airstrip had been built at the ranch even though he knew he wouldn't need it for Presidential services – he never heard from them again. There was also the matter of what he had uncovered about the Bay of Pigs episode which he also wanted made known.

The fluency with which he runs through this story suggests he has been over the ground many times before. When I ask if he ever suffered from 'guilt by association' he pauses, looks thoughtful, and answers, 'That's a fair question' – normally interviewspeak for that-was-close-but-I'll-let-you-get-away-with-it. He says there were stories spread by rivals smearing him afterwards 'because anyone associated with Nixon was fair game'. It came and went in a few months, he said, 'but was enough to let me see the ugly side of politics'.

'Did your faith help?' I ask, arguing that, being such a devout Mormon, he must have convinced some that he would never have acted in a way that went against his conscience.

Perhaps misunderstanding the question he says, 'I don't think faith had much to do with it.' Others have suggested he can be a bit naive in judging people (though that has never stopped him getting rid of employees who don't 'perform'). There is about him, as with many religious people, an enthusiastic desire to believe the best of others, something which must, you think, frequently leave him disappointed.

FAMILY MATTERS: his wife, nine children and their offspring are a major focus of Huntsman's life. The ever-growing group has appeared on Huntsman Christmas cards. 'My wife said if his family got any bigger we'd have to get a new mantelpiece.' commenced business acquaintance Bob Reid

'I wouldn't even attempt to run all these companies without a plane,' says Huntsman, settling back into one of six large beige armchairs that run down both sides of his private jet. At his side rests an autobiography of Rush Limbaugh, the virulently right-wing American radio show host. Behind him two bench seats at the back turn into beds; a small kitchen and three 'bathrooms' fill the rest of the plane. It is, for a $25 million plane ($11 million second hand), surprisingly unplush, sort of G-plan-meets-first-class-British-Rail. That is the Huntsman style. He only stays in modest hotel suites, he tells me. The plane costs Huntsman around $1 million a year to run, but now, with operations in 18 countries there is, he says, no other way of doing it.

Huntsman prides himself on running his companies to "rigorous ethical standards". The downside of this for his bottom-line is that there are some countries where it is very difficult for him to do business at all. He won't, he says, bend the rules. In a celebrated instance in Thailand some years ago, the government's demand for extra kickbacks, and the willingness of Huntsman's Japanese partner to pay the bribes, led him to pull out his company altogether.

Of course, ethics come in all shapes and sizes. Many in the environmental movement would feel Huntsman's abhorrence of backhanders a bit rich. His companies have been extensively criticised in the past for their involvement in developing non-biodegradable clamshells and bottles. It is clear that a certain scrubbing of the image is now going on – cynics might say his large donations to environmental research are part of that. Yet some point out that the contradictions in Huntsman's ecological position are as nothing to the conflict that must go on between his devout Christianity and his earnest profit-seeking.

A dialogue with Huntsman on the subject is like taking a package to a sponge. What conflict" he says.

"But isn't there an naturally exploitative element to capitalism"' I ask. "Doesn't the constant striving for growth and profit eventually mean that rules do get bent, ends justify means and people, perhaps those working for your competitors, for example, suffer?"

"Oh, I don't think so,' he says. "I think the free enterprise system wherever it exists suggests that the best triumphs and the free prevail."

"But in some fields that's just not true. In broadcasting, for example, totally free markets are notorious for producing porn at one end and cheap game shows at the other."

He looks reflective, and then is frank. "I wouldn't know how to answer that because I haven't been in that side of the business, but I see your point. I have been more in the area of direct competitive products and manufacturing, but it has never been in conflict with my church."

For us non-believers there are inconsistencies there too. *The Book of Mormon* describes the religious history of America's pre-Columbian people, who crossed to the continent from the Tower of Babel in barges.

"Do you believe that all actually happened?" I ask him. "What about the indigenous Indians?"

He smiles and nods. "They were the native Indians. Look at the Aztecs and Incas. Look at the concrete they developed and look at the Book. Even a man of average intelligence would find it hard to disagree there are similarities."

"And so you cannot agree with Darwinian theories of evolution?"

He winces slightly. "Yes, we believe those views are wrong."

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It is worth pointing out here that most other multinational business leaders would have defenestrated me at 10,000 feet for asking those kinds of questions. Huntsman didn't, indeed he even appeared to encourage them with an amused if vexed interest.

His religion, it seems, sets the parameters for his determined concentration on business. Just once, in a giveaway aside, does he touch on its essential disciplining effect. "I have always been generous to the church because with my type of personality and interest, who knows where I would have ..." He doesn't finish the sentence or expand on the point.

It was that well-known generosity that led Armand Hammer, the legendary American tycoon with strong Soviet links, to invite Huntsman to help in the rebuilding of Armenia after its devastating earthquake in 1988 which left 500,000 homeless. Huntsman's response was to send one of his sons out, build a concrete factory, and commit his corporation to supplying the slabs for 100,000 apartments in return for the government providing the services to run the factory. It has cost the Huntsman operation $11 million so far. It had nothing to do with religion, he says – Armenia is the home of one of the earliest Christian communities. "It just got to my heart." Similarly his generosity (a $1 million gift) to the American Catholic charity for the homeless, St Paul de Vincent, led to a recent invitation to meet the Pope.

"And what did the Pope say?"

"He said, "I love you", which I thought was great."

The downside of wealth is that he has found himself a natural target for those who want to get a slice of his fortune. The kidnap of his seventh child James by two men who demanded $1 million changed his life. The men were caught and his son recovered, chained to the plumbing in a run-down motel, but not before an FBI agent was so badly knifed by one of the kidnappers that he had to be retired from his job. Huntsman took him on as head of security. There have been other incidents. Huntsman will not elaborate – and now his house in Salt Lake City is surrounded by fences, guards and dogs.

And then there is the fight against cancer. Huntsman's decision to go public on his prostate cancer took some by surprise. "Most men are very silent about it,' he agrees, 'because it strips them of a lot of their functions. It is the meanest disease that can befall a man. Mean in the sense of what it does to you afterwards. I have been publicly on TV and in advertising. I don't care if someone wants to say I have this problem or that, it doesn't matter any more, what matters is will this encourage another individual to go and have a test? And thousands have."

But is it this feeling for his own mortality that

has driven him to push his companies so hard? Some in the industry feel he is motivated by dynastic ambitions to set up something substantial to pass on to his children, the eldest of whom, Jon junior, has already been US ambassador to Singapore at the tender age of 32. (His youngest son Mark is seriously mentally handicapped.) It was this dynastic aim, they argue, which persuaded Huntsman to go into a joint venture with Kerry Packer, a tycoon better known for his media interests.

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As we say goodbye outside his hotel off the Champs Elysées, I am struck by how different he is from the British business leaders you meet. Few, in his position, would have permitted such access. Few, indeed, have such an ardent sense of duty about them.

And there's the rub. Huntsman is the epitome of how Thatcherite Conservatives in this country believed right-wing businessmen should behave, espousing the free market and putting back, with good, old-style Victorian philanthropy, as much as they take out. Don't accuse them of ego. If they get galleries, schools and research centres named after them, well, that's the perk. The irony, of course, is that the only thing most British businessmen have been generous towards is the Conservative Party, and that tendency is on the wane too.

As Huntsman put it himself, there are a lot of people in the world who don't put in as much as they take out. But do we dare question the motivation of those who do? I rather like Huntsman's answer to one of my questions which he had misinterpreted as a dig at the old St Matthew quote about rich men, camels and needles. Stuck in a jam on the Paris *periphérique*, he turned and looked me straight in the eye. 'I just want to make one comment about your suggestion that a rich man might try and buy his way into heaven,' he says. 'And this answer comes straight from the heart. I really couldn't care less. I gave up trying to win a popularity poll long ago.'

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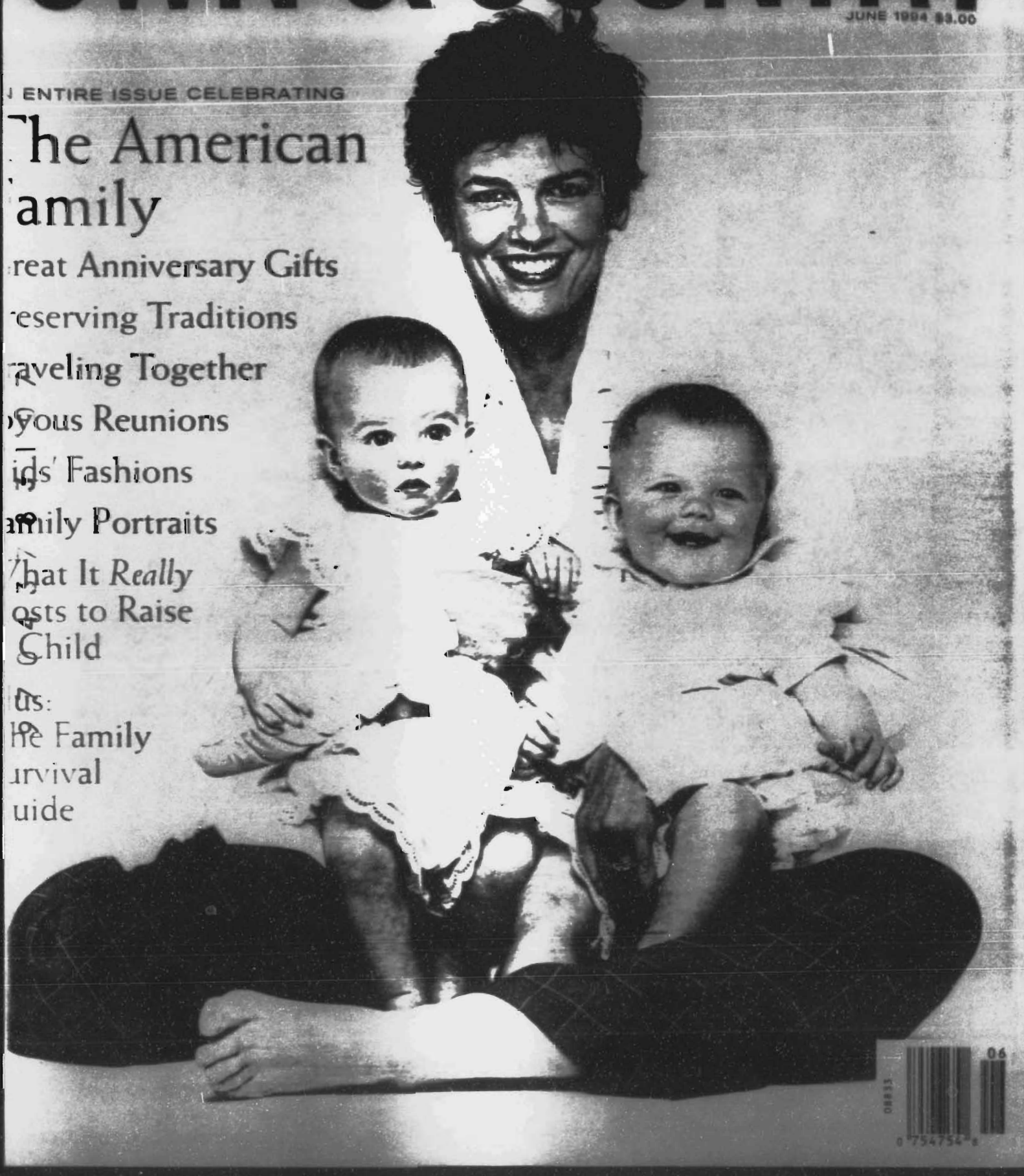
Magazine design and cover portrait by Michael McGuinness, RWS

Attachment D

TOWN & COUNTRY

JUNE 1994 $3.00



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The American Family

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Traveling Together

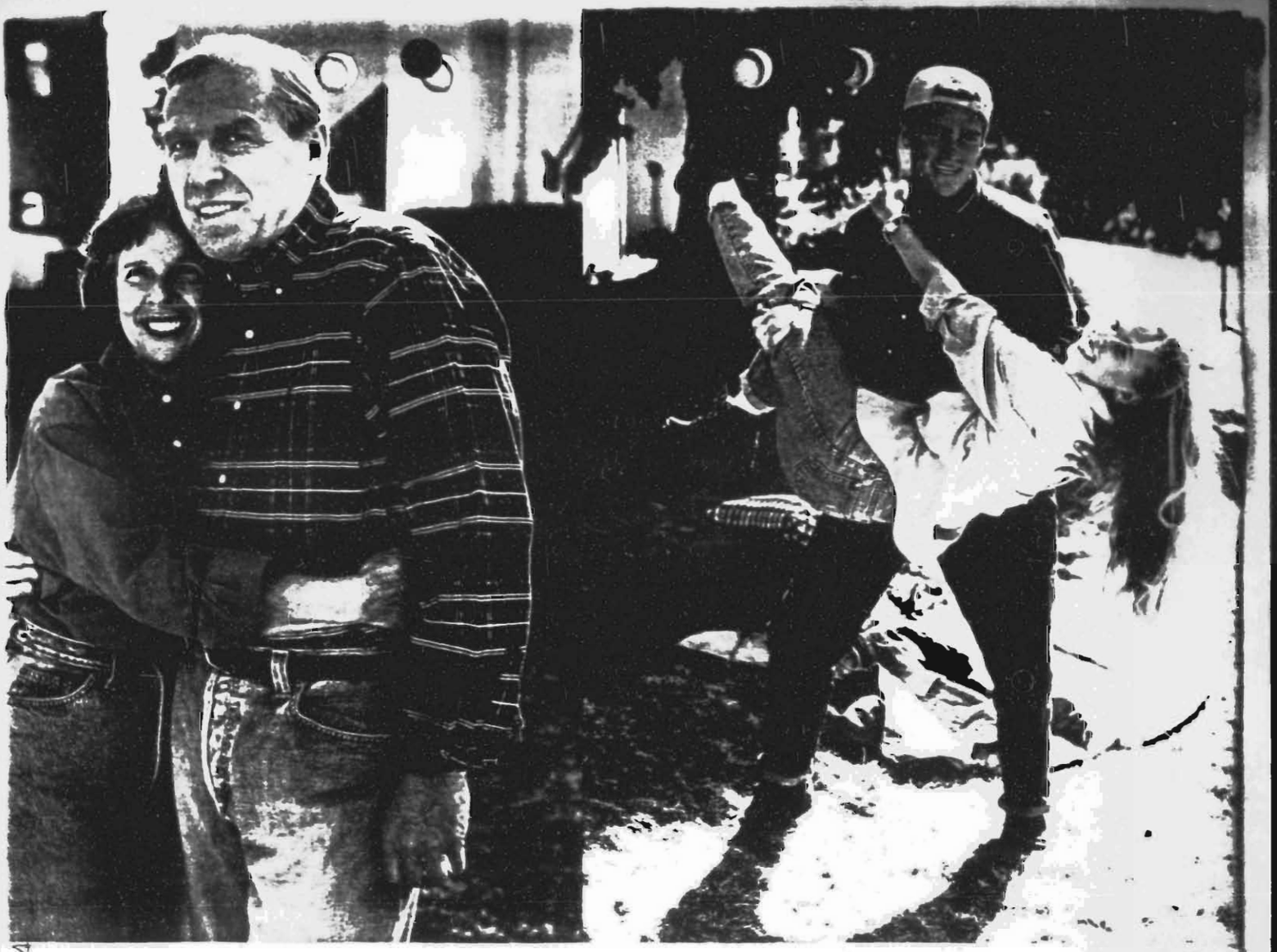
Joyous Reunions

Kids' Fashions

Family Portraits

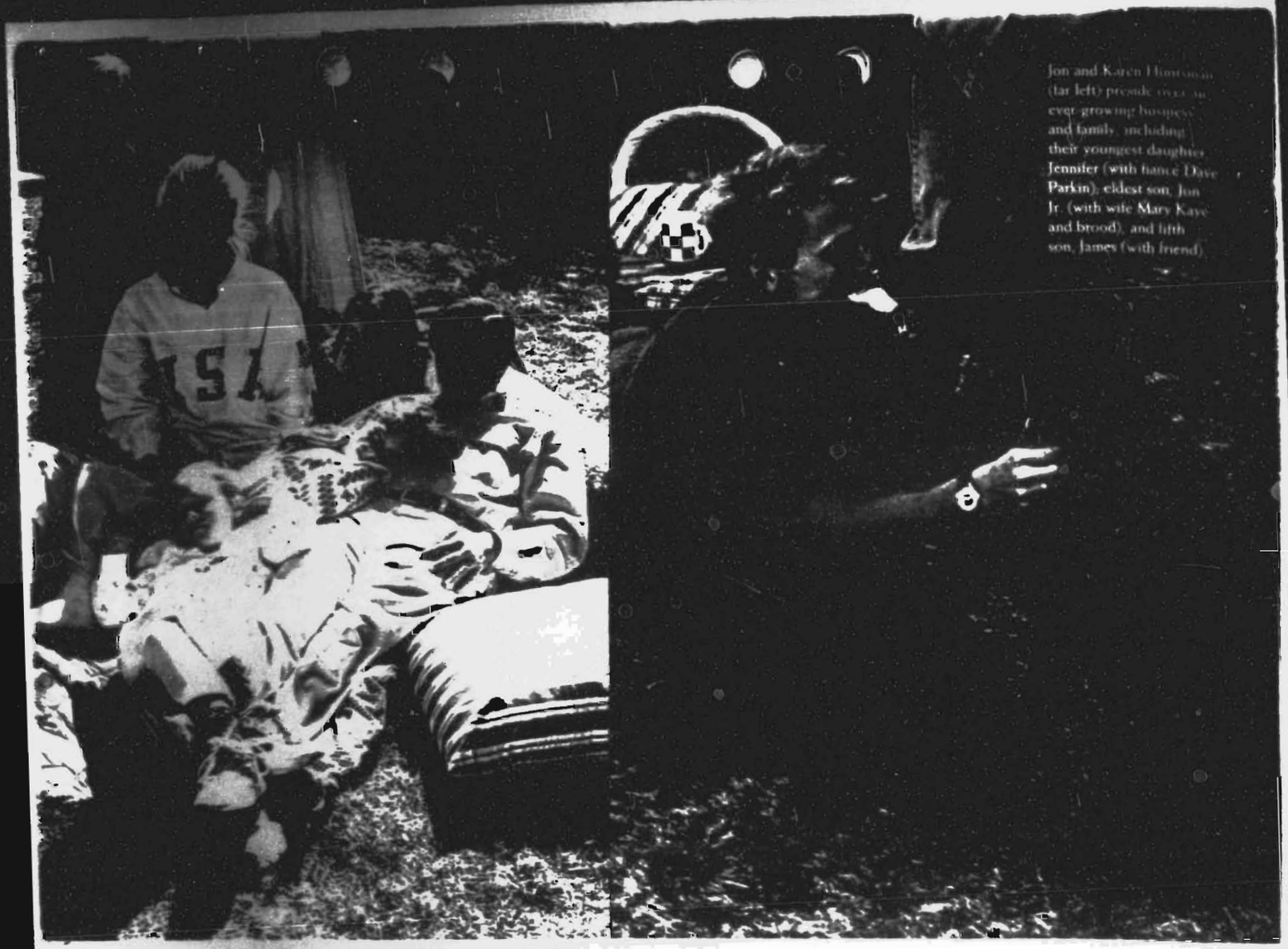
What It *Really* Costs to Raise a Child

Plus:
The Family Survival Guide



DYNA

Meet the newest and most admirable business clan to co
built up a $3.6 billion enterprise in less than twenty years.



Jon and Karen Huntsman (far left) preside over an ever-growing business and family, including their youngest daughter, Jennifer (with fiancé Dave Parkin), eldest son, Jon Jr. (with wife Mary Kaye and brood), and fifth son, James (with friend).

STY

it of the West—the Huntsmans of Utah, who have

Howard Muson. Photographs by Guillermo Cowley.

9704378

Together in a family portrait, they are almost too preposterously beautiful to be believed. The fresh-faced, blond young women, the athletic-looking young men. The armfuls of bright-eyed kids. A sun-loving, outdoorsy group right at home on the Big Rock Candy Mountain. The proud father, tall and rugged, seated at the center, with the mother, who seems too young to have spawned this large, smiling brood.

Welcome to Camelot West. This is the family of Jon and Karen Huntsman of Salt Lake City, who are building what already seems to be a mighty new American business dynasty. Jon M. Huntsman's first company invented the clamshell-shaped polystyrene containers long used for McDonald's hamburgers. Now the Huntsmans control a privately held empire in sixteen countries that furnishes raw materials—the basic chemical feedstocks—for numerous products, from polystyrene cups and trays to shrink-wrap packaging to more durable plastics used in computer casings.

The Huntsman companies and assorted ventures employ 7,000 people around the world and are expected to earn more than $3 billion in revenues this year. Yet the 58-year-old entrepreneur and his wife think of their global enterprises as a family business, and they aim to keep it that way. The Huntsmans have nine children, ranging in age from 18 to 34, and twenty-two grandchildren, with three more on the way. From the time the children were in junior and senior high school, Jon and Karen say, major business decisions were made around the dining room table, with each family member asked to express an opinion—even the younger ones, who, as Karen recalls, were "still putting bottle rockets in the toilets."

"It was a family business long before any of them ever came into the business," says Jon Huntsman. Because the Huntsmans belong to the Church of Jesus Christ of the Latter-Day Saints, it is also a Mormon business, which reinforces the family emphasis. The Mormon church teaches that souls have a preexistence and are waiting to be born into this world, which means large families are welcome. Hard work and business success are also celebrated by the church, which requires its members to tithe 10 percent of their income. Mormon high achievers like the Huntsmans and the Marriotts are held up as models.

The Huntsmans' business, family and philanthropic interests are as tightly woven as the Native American art in Karen's collection—one of the country's finest. This is an entrepreneurial family that is not only having fun creating a fortune and a business dynasty together; they are creating a fortune in order to have more money to give away. The Huntsmans have so far contributed more than $50 million to various humanitarian causes, from the homeless to children's hospitals, and they say it's just the beginning. They are about to set up a family foundation that will likely be one of the nation's largest.

Like the Kennedys, they are well connected in politics, too—Republican politics. Jon Huntsman Sr. was staff secretary to President Richard M. Nixon in the early 1970s, bowing out of government, luckily, just before the Watergate furor broke. Their firstborn, Jon Jr., was only 22 when he served as a staff assistant to President Ronald Reagan; at the ripe old age of 34, Jon Jr., who is fluent in Mandarin, became the U.S. Ambassador to Singapore.

They seem almost to be good to be true, these Huntsmans. Too wonderfully photogenic, too highly precocious, too polished, too generous. But their lives have not been free of pain, and

MOM AND POP (AND AFTER)

Nearly every great American corporation started out as a family business. Even today, says Ivan Lansberg, an organizational psychologist in New Haven, Connecticut, and a leading consultant on family businesses, "35 percent of the Fortune 500 companies are still controlled by the founding families. Moreover, 80 percent of all businesses in the United States today are family businesses."

Clearly, the overwhelming majority of those enterprises are mom-and-pop companies. But don't disparage them, for they generate 50 percent of the GNP. While it is true that family businesses were generally given a bad image by the bickering, nepotism and lack of professionalism depicted in "Dynasty" and "Dallas," the image is wrong, says Lansberg. Most family businesses are extremely well run; they tend to grow fast and prosper for several reasons, including their:

- HIGH DEGREE OF CONCERN for the quality of the company's products or services, because the family name and pride is directly involved.
- WARM ORGANIZATIONAL CULTURE that encourages workers to feel they, too, are part of the "family."
- ABILITY TO MAKE QUICK DECISIONS within the family hierarchy and therefore to move nimbly.
- LONG-TERM PERSPECTIVE—especially about debt and investment—because the family envisions itself as likely to be around for the duration.
- ABILITY TO ASK SHAREHOLDERS (like Mom) to put in long, hard hours of work without overtime pay and to forgo large dividends (thus providing the equivalent of cheap loans).

Despite the advantages, an estimated 70 percent of all family companies do not survive their founders. Most often that's because the founder has given little or no thought to his own succession, says Lansberg. "He dies with everything in his head—the company strategies, the relationships with banks and suppliers—so no one knows exactly what to do. Then the Internal Revenue Service looks for the estate taxes, and the heirs often have to sell the company." Proper estate planning can prevent that.

Often, too, the second generation sells the business simply because most family members have pursued other interests. This fate can be avoided if the founding parents attempt to convey their sense that the business is thrilling, says Lansberg: "You can't come home every night for years, complain about the day's work in front of the kids, and then suddenly expect them to want to continue the business."

What makes all this particularly relevant is that a huge number of family businesses were started soon after World War II. Their founders are now facing retirement, all at once. No matter what happens next—even if the children end up taking over—the firms will change, losing a measure of Mom and Dad's directness, buoyancy and character. PHILIP HERRERA

there is now a strong undercurrent of concern about the future. Jon Sr. has just come through another bout with cancer that raised all the problems of succession.

Beyond that, he and Karen are well aware that ugly struggles over money and power have torn apart other successful family companies. The Hafts of Washington, D.C., the Schwinns of bicycle fame, the Shoens of the U-Haul Co. in Phoenix—almost every day the business press reports stories of family warfare. Karen admits it isn't easy keeping a family that works together and plays together close. "You get sensitivities, you get jealousies," she says. The Huntsmans have instilled values—plus their religious beliefs and their sense of humor—in their children from their earliest years, and they are counting on their efforts to prevent rivalries from erupting among the siblings.

Right now the various enterprises and joint ventures under the Huntsman umbrella are being reorganized into four companies: Huntsman Chemical Corp., Huntsman Packaging, Huntsman Specialty Chemicals Corp. and a new company that will be formed in a $1.06 billion deal under which Huntsman and an Australian partner will absorb the chemicals division of Texaco, Inc. Each company will be headed by a senior executive not in the family. The roles of family members remain loosely defined and flexible, which is not unusual in family companies built by one brilliant entrepreneur. The other key family players:

KAREN HUNTSMAN, 36, is a member of the board of Huntsman Chemical, as is her father, David B. Haight, an apostle of the Mormon church and a former mayor of Palo Alto, California. Although her official biography lists her as a vice-president, she has no day-to-day operating duties. Trim and tanned, with sky-blue eyes, Karen is a woman who knows her mind and tells it straight. She has always been her husband's "silent partner" but prefers the role of homemaker.

JON HUNTSMAN JR. has returned from his diplomatic service and is now vice-chairman of the Huntsman Companies. The dark-haired, 34-year-old elder statesman of the second generation is, in the words of one Huntsman aide, "smooth as silk." Before going to Singapore, he negotiated international joint ventures and licensing agreements for the family enterprise. In his new role, he will serve as his father's alter ego, chairing meetings, representing him on industry panels, speaking to senior managers and employees "to make sure we preserve the aura of a family company."

PETER HUNTSMAN, the 31-year-old second son, is an executive with the newly purchased Texaco division. Peter briefly attended the University of Utah but had too much of the entrepreneurial itch to sit in stuffy classrooms. Since joining the family company, he has negotiated multimillion-dollar deals and become expert at shaving costs on the purchase of raw materials for Huntsman plants. An adventurous spirit, he has made twenty-six trips to Armenia, overseeing a precast concrete plant the family built to help erect housing for victims of the 1988 earthquake. Over the past two years he has personally arranged the purchase in Istanbul and cross-border shipment of more than $500,000 in food relief for Armenians.

RICHARD DURHAM, who is married to the Huntsmans' eldest daughter, Christena, is chief financial officer of the Huntsman Chemical Corp. The 30-year-old Wharton graduate, a tall, slender Clark Kent, has crunched the numbers and worked out financing for many Huntsman deals. Durham, the youngest of nine children in another Mormon family, grew up a block away from the Huntsmans and has known them for years. As a son-in-law, he realizes he has to work harder than other employees to prove ➡

his mettle. "Jon can give me a position and a salary," he says, "but Jon cannot give me the respect of peers."

Other members of this remarkably talented bunch are learning the ropes and moving up in the ranks. Illinois-born Jim Huffman, 26, married to the Huntsmans' second daughter, Kathleen, is credit manager for Huntsman Packaging. Son David Huntsman, 26, has been operating a coloring machine at an upstate New York plant that manufactures plastic packaging. And Paul, 24, started his apprenticeship in February, reporting for work at Huntsman polystyrene plants in the Chesapeake area of Virginia.

Back in September, Jon Huntsman Sr. was in Houston to announce the Texaco deal and explain details of the planned merger to senior managers of the acquired division. On the same day, other family members scattered to carry the news to employees at various plants. Jon Jr. traveled to Jefferson County, Texas, where he addressed an auditorium full of workers who were concerned about their future and eager to know more about their new bosses. Peter Huntsman was dispatched to Conroe, Texas, to assuage the fears of workers at another plant. Son-in-law Rick Durham met with the research-and-development staff in Austin, and David Huntsman was up in Canada speaking to another group. Altogether, these emissaries help preserve the family atmosphere of the fast-growing group of companies.

The CEO and chairman of the Huntsman Companies is a tall, impressive man who resembles a former NFL tight end only lately taking on a middle-age spread. "I love the hunt, I love the kill, and I then I love the managing afterward," he says about his acquisitions spree. For all his shrewd dealing, however, family members and aides will tell you that Huntsman is loath to fire anyone, and is known for many acts of generosity, large and small. One night in 1993, for example, he woke up thinking that teachers did not get enough recognition, so he established annual educational merit awards of $10,000 each for ten outstanding teachers and administrators in Utah.

As part of the Texaco deal, he insisted that the sellers find other jobs in their company for any managers displaced by the merger. Huntsman has told workers in all his plants that he would probably exit the chemical business if an accident in one of his plants resulted in death or serious injuries "because of something we did—I could not live with myself under those conditions."

So far, he says, the company's safety record is unblemished. Well aware that throwaway plastic products clutter the environment, Huntsman has done what he can to alleviate the problem: His company participates in an industry group that is recycling polystyrene, and he has endowed the Huntsman Environmental Research Center at Utah State University.

Huntsman's take on the Watergate scandal reflects his deeply felt priorities. He has denied any knowledge of the cover-up and still expresses affection for Nixon. The most lamentable aspect of that affair, to both him and Karen, were the revelations about Nixon's personal finances. Though the President earned $200,000 in salary and an additional $200,000 from outside sources, he had given a total of only $500 to charity. That, in the Huntsmans' eyes, was "demeaning."

The children know that they must give something back—that they must use their wealth to enhance the quality of life of those around them.

Born in Blackfoot, Idaho, the son of a music teacher, Jon Huntsman in his early years could have stepped from the pages of a Horatio Alger story. He picked potatoes, started his own lawn-mower service, did sales for J.C. Penney. After the family moved to Palo Alto, California, where his father had enrolled at Stanford for graduate studies, he held down two jobs after school. He attended the Wharton School on a scholarship and after graduation married Karen, whom he first met in junior high in Palo Alto. He then went to work in an egg-distribution business owned by a few of Karen's uncles in Los Angeles, where he apparently heard the word whispered in *The Graduate*: "plastics." Noting that cardboard egg containers often tore and leaked, he oversaw the development of a polystyrene carton that was marketed in a joint venture with the Dow Chemical Co. Eventually Huntsman went off on his own, forming the Huntsman Container Corp., which created more than seventy plastic packaging products, including the clamshell container (recently phased out by McDonald's because of its environmental impact).

The Huntsman empire began to grow exponentially when he decided to buy companies that manufacture the basic raw materials that go into these products. Petrochemicals is a highly cyclical industry, and Huntsman's real genius has been in spotting companies that have reached the bottom of the cycle, scooping them up at bargain prices and with intricate financing packages, and introducing cost-efficiencies to make them more productive. In these enormously risky deals, Huntsman's judgment of the market—or his luck—has held out. In the mid-1980s, the upward spike in demand for one material in particular, styrene monomer, was like an out-of-the-park home run for Huntsman Chemical.

Karen has been a close adviser every step of the way. "I was always aware of everything he was doing, people he was hiring. But when someone decides to go off on his own, he needs a support system, and that was probably my most important role because we had a lot of children." The hardest time she can recall was in the 1970s, when the first global oil crisis left the Huntsman Container Co. short of raw materials to manufacture its packaging. "If you can't keep your product going out of the plant, you can't pay your employees," Karen says. "Jon worried most about meeting payroll, and that was very stressful on the family."

The children grew up in Los Angeles, New York City (where Huntsman's Continental Dynamics had a Park Avenue headquarters) and Washington, D.C. (where Huntsman served in the White House and later headed the large Mormon mission there). The family settled down in Salt Lake City because they had relatives living there, wanted to be near their Mormon roots and were attracted by the family-friendly lifestyle.

"Rambunctious and chaotic, very competitive," is the way Jon Jr. characterizes growing up in the Huntsman household. The children remember fondly a family institution known as the "I-beat-Dad contest." Jon Huntsman invited his kids to challenge him at any sport of their choosing; if the boys beat him, they won a .22 caliber rifle; the girls were promised a charm bracelet as a prize. Dad rarely lost, partly because he set the terms of each contest.

The kids, always fully aware of the business, were enlisted to help with their father's first major acquisition, a $42 million purchase of Shell Oil's polystyrene division in 1983. After the deal was signed, Huntsman had to persuade the 185 employees to

go with his company rather than stay with the sellers, who had offered to find other jobs for them within Shell. As Peter Huntsman tells it, his father organized a picnic for the employees and, huddling with his young family, told them that their job was to fan out and convince the workers' families to join up with the new company. "So we kids went off to play with their kids. And Dad stood up at one point and talked about the warmth of working in a family business," he recalls. "Of the 185 people, 184 came with us after that first day."

The church played a central role in nurturing the young Huntsmans' talents. Their participation in Mormon youth groups offered opportunities to develop leadership skills. The sons worked abroad as church missionaries, Jon Jr. and David in Taiwan, Peter in Spain, Paul in Japan. "The beauty of that process," their father says, "is that they were really helping themselves mature and develop good habits."

Jon Huntsman did not push his kids too hard to join the family company—a strategy many business parents have found works best. "It was drummed into us very early that you make something of your life," Jon Jr. says. "If it's going to be in business, great. If it's going to be in another field, terrific. Just make sure you give it your best shot."

Even so, the sons who have chosen to go into the business must wrestle with other demons common to the offspring of empire builders. No matter how much they ultimately contribute to the Huntsman Companies, they may never be able to "beat Dad" on his turf. Acknowledging the problem, Jon Jr. says: "Bill Marriott came along and tripled the size of the family's hotel empire, but his father, J.W. Marriott, is still the one who created it. . . . You can let that drive you crazy, or you can try to build on a great foundation."

The Huntsmans' home—two low-slung, stone and wood-frame buildings—is perched in the foothills of the Wasatch Range outside of Salt Lake City. The tight security at the gate is a reminder that for all their success and wealth, the Huntsmans have had their share of troubles, including the foiled kidnapping, six years ago, of their second youngest son, James.

Seated in her living room, on one of two long, facing couches, Karen has returned from the state legislature, where she lobbied for more funds for higher education (she is a member of the Utah state board of regents). She also does a lot of community work, serving on boards of the Huntsmans' various philanthropic interests.

Though the patriarchal church has always frowned on women working outside the home—the hierarchy strongly opposed the Equal Rights Amendment—many Mormon women no longer follow the traditional path. Karen says her three daughters, like her, prefer to be homemakers. But she would not be opposed to their working in the business. Christena, for one, would "grind up a lot of people" if she worked for the company, her proud mother says gaily. (In a separate interview, the oldest daughter confirmed that her children are her number one priority but reported that her youngest sister, Jennifer, 21, has informed their father that she wants to run the company.)

Karen speaks candidly of the Huntsmans' youngest son, Mark, who is mentally handicapped. The 18-year-old lives at home with his parents and Jennifer. His brothers and sisters treat him as part of the group. "I think our youngest son being retarded has been a wonderful teaching experience for the family," Karen says. "It's broken a lot of ice, created a lot of humor, a lot of tenderness."

Do the kids agree on business matters? "It would be much easier if our children were all out in different careers, much easier." Karen says. But when small blowups occur, Jon and Karen are quick to go to the homes of the family members involved to put out the fire. The children, despite the differences in their ages, are very loyal to one another. "You just have to be grateful for the precious times you've shared, and hope they can continue to work together," Karen says. "I just feel we've been through enough that our children understand the big picture in life."

The big picture has suddenly loomed as an immediate concern to the Huntsman family. In December 1991, Jon Sr. was diagnosed as having prostate cancer and underwent a radical prostatectomy a month later. He is also currently being treated for what he describes as "a mean bout of mouth cancer." Although it appears that the cancer has been checked, the scare has spurred estate planning and thoughts about the leadership succession at the Huntsman companies that were perhaps put off too long. One British journalist has suggested that the pace of Huntsman's acquisitions reflects a hurry to create more wealth to leave his family.

Cancer killed Huntsman's mother, whom he adored. He has been quite public about the prostate operation, which, he has written, "sacks a man . . . removes a lot of his dignity, his drives, his feelings." He has appeared on television to urge other men to undergo regular testing for the disease. And last year he gave $10 million to the University of Utah to establish what is now called the Huntsman Cancer Research Institute, which he hopes will ultimately find a cancer cure. The research institute will be a top-priority project for the new family foundation, to be funded with a gift of the family's stock in Huntsman Chemical Corp.

For the short run, Huntsman has experienced and capable senior managers who he says can "move right in" to keep his companies running if anything happens to him. He expects that family members "will succeed in some way downstream." But his sons and sons-in-law are still relatively young, and he doesn't want to "move them ahead of themselves."

As the number one son, Jon Jr. might be viewed as Jon Huntsman's natural heir. But he frankly acknowledges that others in his generation have business skills and experience in certain areas that he lacks. The former ambassador expects to balance his business career with public service and sees himself playing a role in guiding the development of the family foundation. The Huntsman children have been told over and over—the lesson has been "drummed" in—that they are to give something back; they must use their wealth to enhance the quality of life of those around them.

Jon Jr.'s generation appears to have gotten the message. The philanthropic mission may be what will enable the young Huntsmans to make their mark, to "beat Dad" and to please him at the same time by seeing that his fortune is applied to good ends. That, along with their humility and sense of humor, could be what it takes, down the road, to prevent a major business empire from self-destructing.

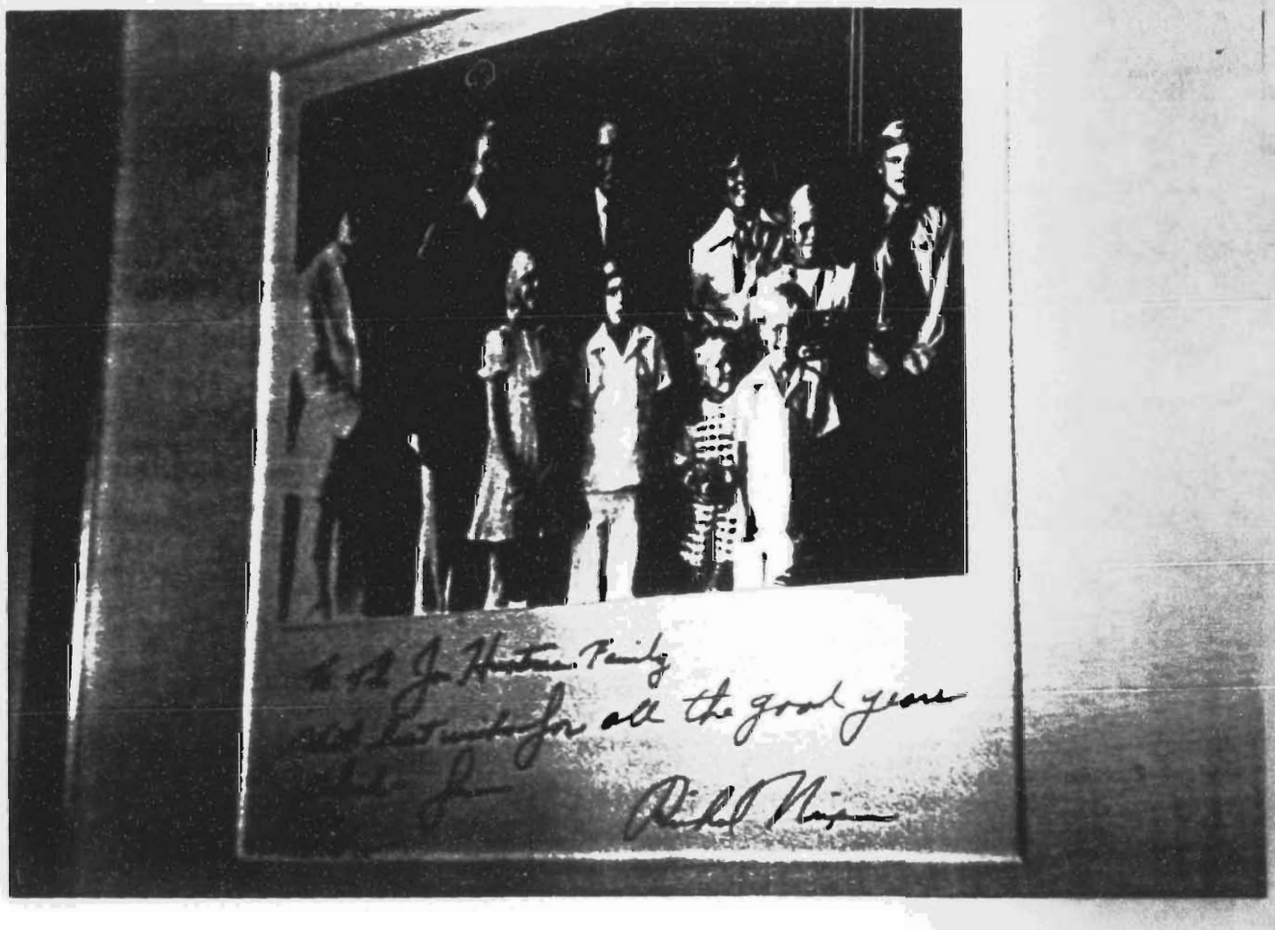
Jon Huntsman Sr. is confident that his progeny won't lose sight of the big picture. "I think they are happy and challenged in the business. They have a strong family life that leads to high morality and community values. They have a faith in God that will sustain them in difficult times, provide an anchor in their lives.

"I can't express to you what an honor and privilege it is to work with my children in a positive, uplifting way. I have told them that if our work ever created friction in the family, or caused even one member to become disenfranchised, I would immediately sell the businesses. And they know I would, because there is nothing more important to us than the sanctity and unity of our family." ✱

Attachment E

Richard Nixon, Jon Huntsman, Sr., Christena Huntsman,
Jon Huntsman, Jr., Karen Huntsman (James Huntsman in arms),
David Huntsman, Paul Huntsman

Attachment F

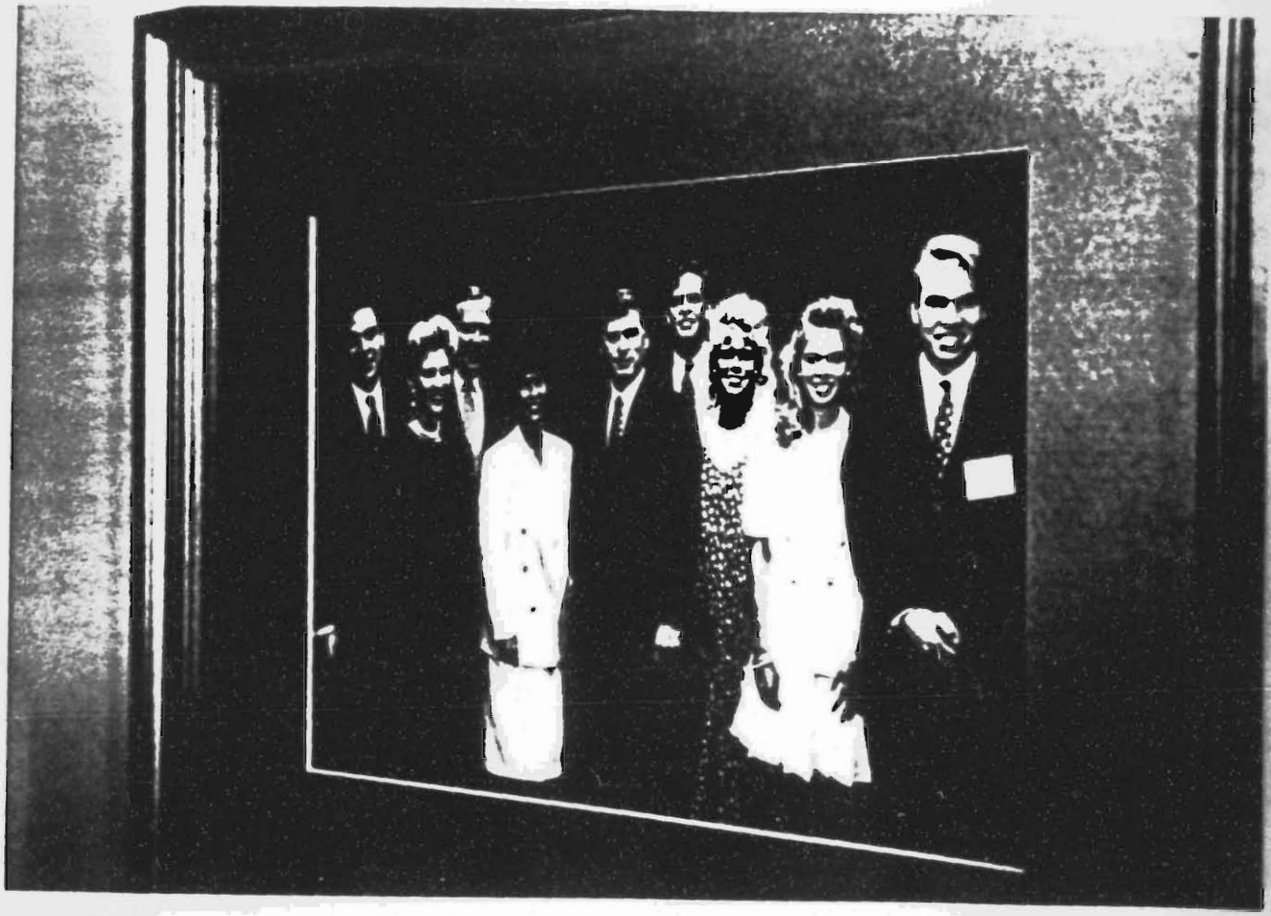


Back Row: Jon Huntsman, Jr., Jon Huntsman, Sr., **Richard Nixon,** Karen Huntsman, Kathleen Huntsman, Peter **Huntsman;**
Front Row: Christena Huntsman, David **Huntsman,** James Huntsman, Paul Huntsman

Attachment G

Karen Huntsman, Paul Huntsman, David Huntsman, Peter Huntsman,
Ronald Reagan, Jon M. Huntsman, Sr., Kathleen Huntsman,
Christena Huntsman, Jon M. Huntsman, Jr.,
James Huntsman, Jennifer Huntsman

Attachment H



Jon Huntsman, Jr., Mary K. Huntsman, Jon Huntsman, Sr.,
Karen Huntsman, Dan Quayle, James Huffman,
Kathleen H. Huffman, Jennifer Huntsman, James Huntsman

Attachment I

AFFIDAVIT OF KAREN HUNTSMAN

I, Karen H. Huntsman, hereby state and affirm that:

1. My name is Karen H. Huntsman.

2. I live at

3. I am the mother of nine children, including James and Mark Huntsman and Jennifer Parkin (nee Huntsman).

4. Ours is a philanthropically and politically active family. My husband and I have instilled in our children from an early age the message that they should contribute to the communities in which they live. Family discussions in our home often center on political issues and candidates for public office. In the early 1970's, the children then born visited their father, a staff secretary to President Nixon, in the White House. In 1984, my husband and I took all of our children to the Republican National Convention in Dallas.

5. My youngest child, Mark, has limited mental abilities, but he is able to understand and communicate his wishes and ideas. My husband I and our other children have always tried to treat Mark as any other member of the family. We include him in family discussions and activities.

6. My husband and I established trust accounts in amounts exceeding each for James, Jennifer and Mark in 1991 with proceeds from certain family business concerns. The money set aside was the children's money, to be used on their behalf only.

7. The trust account for Jennifer was closed and the proceeds transferred to her and her husband on July 15, 1994, shortly after their marriage. James' trust account was closed and the proceeds transferred to him on December 20, 1995.

8. I remain the custodian of the trust account for Mark, as I was for the accounts for James and Jennifer. I continue to have signatory power on the account for Mark, as I did on the accounts for James and Jennifer when the accounts were in existence.

9. Although Mark does not have, and James and Jennifer did not have, signatory power over the accounts, I have routinely endeavored to keep the children apprised of disbursements and satisfy myself that the disbursements are being made with their knowledge and consent.

10. Bob Bennett is a neighbor, fellow church member, and family friend. In 1992, my husband and I discussed Mr. Bennett's candidacy for the United States Senate on various occasions with the children, stated that we would be supporting his candidacy, and discussed with the children whether they also wanted to support the Bennett campaign.

11. Each of the children knew Mr. Bennett. James and Jennifer supported him personally and identified with his political positions. They each told me they wanted to contribute to his campaign. Mark liked Mr. Bennett personally, and I understood that Mark wanted to give him the same type of support as James and Jennifer. The contributions from James', Jennifer's and Mark's trust accounts were made based on my understanding that they each wanted to contribute to the campaign.

12. I did not know that the Bennett campaign had refunded the contributions from James, Jennifer, and Mark until I read the factual and legal analysis that accompanied the "reason to believe" letter I received from the Federal Election Commission in July 1996.

13. I am informed that the refunds, which were made in 1994, were sent to a Huntsman family business address, where an employee filed them away without notifying me that the refunds had been made.

14. After receiving the Commission's letter, the checks were located and presented to the bank on which they had been drawn. The bank honored the checks. Thereafter, $2,000 was returned to James and Jennifer each and $2,000 was redeposited into Mark's trust account.

Karen H. Huntsman

Subscribed and sworn to before me this 23rd day of August, 1996.

Notary Public

Notary Public
PAMELA G. BAILEY
500 Huntsman Way
Salt Lake City, Utah 84108
My Commission Expires
June 4, 2000
State of Utah

My Commission Expires: June 4, 2000

Attachment J

AFFIDAVIT OF JAMES HUNTSMAN

I, James Huntsman, hereby state and affirm that:

1. My name is James Huntsman.

2. My birthdate is February 7, 1971. I am 25 years old.

3. I reside at

4. I am married and the father of two children.

5. Until the end of 1995, there was a bank account held in trust for me to pay for things such as schooling and other expenses. My mother was the account custodian.

6. The account was closed in 1995 and the proceeds were transferred to me.

7. Although I could not write checks against the account, I was routinely consulted about disbursements that were made. If I wanted money withdrawn from the account for one reason or another, I would consult with my mother.

8. My family is interested in politics. We often discuss political issues and candidates. While growing up, I attended various political fundraisers and the Republican National Convention in Dallas. My brother Jon was an assistant to President Reagan and the ambassador to Singapore.

9. I was taught from an early age that it is important to financially support candidates for public office who share my values and political views.

10. I remember discussing the Bob Bennett campaign for the Senate with my parents at various times in 1992. Mr. Bennett was a neighbor of ours and a family friend. I was very interested in Mr. Bennett's campaign and wanted to contribute to it.

11. I was aware in 1992 that $2,000 from my trust account was contributed to the Bennett campaign in October 1992. My parents and I discussed these contributions and I made clear that I supported his candidacy in this way.

12. I was 21 at the time the contributions to the Bennett campaign were made from my trust account. I knowingly and voluntarily made those contributions.

James Huntsman

Subscribed and sworn to before me
this 23rd day of August, 1996.

Pamela G. Bailey
Notary Public

Notary Public
PAMELA G. BAILEY
500 Huntsman Way
Salt Lake City, Utah 84108
My Commission Expires
June 4, 2000
State of Utah

My Commission Expires: June 4, 2000

9704318123

Attachment K

AFFIDAVIT OF JENNIFER PARKIN

I, Jennifer Parkin, hereby state and affirm that:

1. My name is Jennifer Parkin (nee Huntsman).

2. I was born on November 27, 1972. I am now 23 years of age.

3. I reside at

4. I am married and the mother of one child.

5. Until July 1994, there was a bank account held in trust for me for which my mother served as custodian. My parents established the account to pay for certain things, such as college expenses. I understood when disbursements were made from the account and for what purposes. No such disbursements were made over my objection.

6. Shortly after my marriage in 1994, the money left in the trust account was transferred to me and my husband.

7. My family is politically active. Family discussions have often centered on political issues and candidates for public office. I became personally interested in politics when I was old enough to understand the issues, which was about when I entered high school. I follow political issues in the newspapers and on television.

9. I knew Bob Bennett as a neighbor and member of our church. He was a family friend. I agreed with his stand on the issues, and I supported his run for the Senate.

10. I was 19 at the time the contributions were made to the Bennett campaign. I recall discussing the contributions with my parents before they were made and agreeing with them that they should be made.

11. Although my political opinions are similar to those of my parents, whom I deeply respect, I have exercised my own judgment in deciding whether to contribute to a political campaign. I declined to contribute to the Enid Greene campaign

in 1992, although my parents did so and suggested that I consider doing so also.

12. My contributions to the Bennett campaign were made knowingly and voluntarily.

Jennifer Parkin

Subscribed and sworn to before me this 23rd day of August, 1996.

Pamela G. Bailey
Notary Public

Notary Public
PAMELA G. BAILEY
500 Huntsman Way
Salt Lake City, Utah 84108
My Commission Expires
June 4, 2000
State of Utah

My Commission Expires: June 4 2000

97043/83126

Attachment L

AFFIDAVIT OF MARK HUNTSMAN

I, Mark Huntsman, hereby state and affirm that:

1. My name is Mark Huntsman.

2. I live at

3. I was born on January 20, 1975. I am 21 years old.

4. Bob Bennett is my friend. I like to help him.

Mark Huntsman

Mark Huntsman

Subscribed and sworn to before me this 23rd day of August, 1996.

Pamela G. Bailey
Notary Public

My Commission Expires: June 4 2000

Notary Public
PAMELA G. BAILEY
500 Huntsman Way
Salt Lake City, Utah 84108
My Commission Expires
June 4, 2000
State of Utah

9704378311 28

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

JAN WITOLD BARAN
(202) 429-7330

August 27, 1996

FACSIMILE
(202) 429-7049

Peter Blumberg, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4208 (Friends of Bob Bennett Senatorial Campaign Committee and Stanley R. deWaal, as Treasurer)

Dear Mr. Blumberg:

As noted on the enclosed Statement of Designation of Counsel, this office represents the Respondents in the above-captioned matter. In the future, please address all correspondence concerning the Respondents in this matter to my attention.

In addition, pursuant to 11 C.F.R. § 111.18, my clients request that the Commission enter into negotiations directed toward reaching a conciliation agreement in this matter before any finding of probable cause.

If you have any further questions, please do not hesitate to call me at the above number.

Sincerely,

Jan Witold Baran

Encl.

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4208

NAME OF COUNSEL: Jan Witold Baran

ADDRESS: Wiley, Rein & Fielding

1776 K Street, N.W.

Washington, D.C. 20006

TELEPHONE: (202) 429-7000

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.

Date

Signature

RESPONDENT'S NAME: Friends of Bob Bennett Senatorial Campaign Committee by Stanley R. deWaal, Treasurer

ADDRESS:

HOME PHONE:

BUSINESS PHONE:

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. de Waal, as treasurer, Karen Huntsman	)	MUR 4208

SENSITIVE

GENERAL COUNSEL'S REPORT

I. GENERATION OF MATTER

On June 25, 1996, the Commission found reason to believe that the Friends of Bob Bennett Senatorial Campaign Committee ("the Committee"), and Stanley R. de Waal, as treasurer, violated 2 U.S.C. § 441a(f) by receiving excessive contributions from individuals.[1] The Commission also found reason to believe that the Committee violated 2 U.S.C. § 434(a)(6)(A) by failing to file 48-hour disclosure reports. On August 27, 1996, the Committee responded to the Commission's findings by requesting pre-probable cause conciliation. Attachment 1.

The Commission also found reason to believe on June 25, 1996 that Karen Huntsman violated 2 U.S.C. § 441a(a)(1)(A), by making excessive contributions to the Committee. Karen Huntsman submitted a response on August 26, 1996 requesting that the Commission take no further action with respect to her violations. Attachment 2.

[1] This matter was generated by an audit of the Committee undertaken in accordance with 2 U.S.C. § 438(b). The Committee is the authorized committee of Senator Robert F. Bennett, who was a 1992 candidate for the office of United States Senator for Utah.

II. FACTUAL AND LEGAL ANALYSIS - CONTRIBUTIONS FROM MINORS

A. Commission Findings

The Commission found reason to believe that Karen Huntsman violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to the Committee; and in receiving the contributions, that there was reason to believe the Committee violated 2 U.S.C. § 441a(f). The Commission identified eight $1,000 contributions that it attributed to Karen Huntsman. Two $1,000 contributions designated for Senator Bennett's primary and general election campaigns were made from Karen Huntsman's personal checking account on October 2, 1992. On the same date, six $1,000 contributions were made to Senator Bennett's primary and general election campaigns from three separate accounts on which Karen Huntsman appears on the check as the account custodian on behalf of three other individuals, James H. Huntsman, Jennifer Huntsman, and Mark H. Huntsman. The six contributions appeared to be drawn on custodial accounts held for Karen Huntsman's children, but controlled by her, and therefore, attributable to her. *See* 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1(i)(2)(ii); General Counsel's Report in MURs 4252, 4253, 4254, and 4255, dated April 4, 1996.

B. Response

The Committee did not substantively respond to this finding and requested pre-probable cause conciliation. Attachment 1. However, counsel to Karen Huntsman provided a detailed response, including affidavits from Karen Huntsman's children. Attachment 2.

The response argues that no violation occurred since the contributions were made knowingly and voluntarily by the children with their own funds. Attachment 2 at 2. It is explained that two of the three children (Jennifer Huntsman and James Huntsman) were over 18 years of age at the time of the contributions and that all the contributions were made from trust accounts established ten months before the date of the contributions. *Id.* The response states that the accounts were established to provide for educational expenses and other expenses of the children, and were not established as a source for political contributions. *Id.* It is explained that the Huntsman family is "well-known for its charitable and humanitarian philanthropy, as well as its involvement in the political arena." *Id.* at 3. Furthermore, the response notes that Senator Bennett was a "neighbor, family friend, and member of the Huntsmans' church, whose political views were similar to the Huntsmans' own." *Id.* at 2. The parents discussed the Bennett candidacy with the children and the "contributions were in accord with the wishes of each of the children." *Id.*

James and Jennifer Huntsman provided affidavits explaining that they made the contributions because of the family's general involvement in politics and its relationship to Senator Bennett. *Id.* at 30-34. To demonstrate her independence in her decision to contribute, Jennifer Huntsman pointed out that she declined to contribute to the candidacy of Enid Greene despite her parents' suggestions that she do so.[2] *Id.* at 33-34. The third Huntsman child whose contributions are at issue, Mark Huntsman, was 3 1/2 months

[2] Jennifer Huntsman was married in the period since the contributions were made, and her new legal name is Jennifer Parkin. For the purposes of clarity and consistency, this report refers to her by her maiden name.

away from his 18th birthday at the time of the contributions. *Id.* at 2. Further, it is explained that he is "mentally retarded." *Id.* The response states that despite his condition, Mark Huntsman "can express his thoughts and wishes," and "is included as much as possible in the family's discussions and activities." *Id.* at 6. Mark Huntsman submitted an affidavit stating that Senator Bennett is his "friend" and that he "likes to help him." *Id.* at 36. Finally, the response notes that the Commission has previously taken no further action against other respondents in situations similar to the Huntsman factual pattern. *Id.* at 9-10 (citing MURs 488, 4252, 4253, 4254, 4255).

C. Analysis

The Office of General Counsel recommends that the Commission take no further action against Karen Huntsman or the Committee, with respect to the contributions attributed to Karen Huntsman. Minor children may make contributions to political committees if the decision to contribute is voluntary, the contributed funds are owned or controlled by the child, and the contributions do not constitute the proceeds of a gift whose purpose is to provide funds for the contribution. 11 C.F.R. § 110.1(i)(2)(i)-(iii).

James and Jennifer Huntsman were over 18 at the time of the contributions, and, therefore, were not minors. 11 C.F.R. § 110.1(i)(2). As adults, their contributions should not be attributed to Karen Huntsman. Furthermore, there is information indicating that the contributions of James and Jennifer Huntsman were voluntary and made with their own funds. Their affidavits indicate that it was a family tradition to contribute to political campaigns, and that they supported Senator Bennett because of shared political philosophy and because they were personal acquaintances. Further, there is no indication

that Karen Huntsman placed the funds in the trust accounts of James and Jennifer Huntsman for the purpose of contributing to the Committee. The funds were placed in the accounts ten months prior to the date of the contributions, and the accounts were established primarily for educational expenses.[3] 11 C.F.R. § 1101.1(i)(2). Therefore, it appears that James and Jennifer Huntsman voluntarily contributed to the Committee. 11 C.F.R. § 110.1(i)(2)(i).

The contributions made by Mark Huntsman, who was under 18 years of age at the time of the contributions and is developmentally disabled, present an issue as to whether he could make a knowing and voluntary contribution. As with the other Huntsman children, Mark Huntsman had a social connection to Senator Bennett and indicated in his affidavit that he wanted to help Senator Bennett. Additionally, Karen Huntsman's response stated that Mark Huntsman was included in the Huntsman family's political pursuits. Nevertheless, a minor's general interest in politics or in helping friends does not necessarily mean that he has knowingly and voluntarily decided to contribute to a federal election campaign. The Commission has considered similar contributions from minors where it was questionable whether contributions were knowing and voluntary. *See* MUR 4252 (Commission took no further action against the parents of children, one as young as 8, after evidence was provided indicating that the children's families were politically active, and that the children took some interest in politics); MUR 4255 (Commission took no further action against parents who contributed $3,000 from

[3] Under the Utah Transfers to Minors Act, the "custodial property" of accounts like the ones accounts held for the Huntsman children are "indefeasibly vested in the minor." Utah Stat. Ann. 75-5a-112(2) (1995). Therefore, the children are the owners of the accounts.

children ages 1 and 3 years old because of the small amounts involved and the fact the parents sought refunds). As with these previous MURs, the contributions involving Mark Huntsman also present difficult subjective determinations concerning the ability to make knowing and voluntary contributions. In light of these factors, the Office of General recommends that the Commission take no further action.

III. CONCILIATION AND CIVIL PENALTIES FOR REMAINING FINDINGS AGAINST THE COMMITTEE

The Commission found reason to believe that the Committee violated 2 U.S.C. § 441a(a)(1)(A) by receiving excessive contributions from several individuals. Michael Tullis, the Committee's Custodian of Records, made excessive contributions resulting from the untimely reimbursement of his expenses. *See* 11 C.F.R. § 116.5. Mr. Tullis made advances through the use of his personal credit card to the Committee for his travel and subsistence expenses, the travel and subsistence expenses of others, campaign office expenses, media expenses, and other miscellaneous items. On June 1, 1992, Mr. Tullis' outstanding credit balance was at its highest level, totaling $22,206. In addition to Mr. Tullis' staff advances, the Committee's audited contribution records revealed 24 contributions from 17 contributors in excess of the contribution limitations. These excessive contributions totaled $19,450, but included the contributions involving Karen Huntsman and her family. After subtracting the Huntsman contributions, the Committee has received a total $13,450 contributions made in excess of contribution limitations.

Thus, the Committee has received, from all sources, excessive contributions totaling $35,656.

The Commission also found reason to believe that the Committee violated 2 U.S.C. § 434(a)(6)(A) by failing to disclose, within 48 hours of receipt, contributions of $1,000 or more received after the twentieth day, but more than 48 hours before, the primary and general elections. The primary and the general elections for the Senate in Utah were held on September 8, 1992 and November 3, 1992, respectively. Therefore, the Committee should have disclosed contributions of $1,000 or more that were received between August 19, 1992 and September 6, 1992 and between October 14, 1992 and November 1, 1992, within 48 hours after the receipt of such contributions. 2 U.S.C. § 434(a)(6)(A). The Committee was required to report 131 such contributions but failed to report 37 notices on 14 separate dates. These unreported contributions total $649,001.

The Committee has requested that the Commission enter into pre-probable cause conciliation. Attachment 1. Since no additional investigation is required, the Office of General Counsel recommends that the Commission enter into conciliation with the Committee prior to a finding of probable cause to believe.

RECOMMENDATIONS

1. Take no further action against Karen Huntsman and the Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. de Waal, as treasurer, with respect to transactions involving Karen Huntsman.

2. Enter into conciliation with the Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. de Waal, as treasurer, with respect to violations of 2 U.S.C. §§ 441a(f) and 434(a)(6)(A).

3. Approve the attached conciliation agreement.

4. Approve the appropriate letters.

5. Close the file with respect to Karen Huntsman.

Lawrence M. Noble
General Counsel

10/10/96
Date

BY: Kim Bright-Coleman
Kim Bright-Coleman
Associate General Counsel

Attachments

1. Response of the Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. de Waal, as treasurer (August 27, 1996).
2. Response of Karen Huntsman (August 26, 1996).
3. Proposed conciliation agreement.

Staff assigned: Peter G. Blumberg

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Friends of Bob Bennett	)	MUR 4208
Senatorial Campaign Committee, and	)	
Stanley R. de Waal, as treasurer;	)	
Karen Huntsman.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on October 16, 1996, the Commission decided by a vote of 4-0 to take the following actions in MUR 4208:

1. Take no further action against Karen Huntsman and the Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. de Waal, as treasurer, with respect to transactions involving Karen Huntsman.

2. Enter into conciliation with the Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. de Waal, as treasurer, with respect to violations of 2 U.S.C. §§ 441a(f) and 434(a)(6)(A).

3. Approve the conciliation agreement, as recommended in the General Counsel's Report dated October 10, 1996.

(continued)

4. Approve the appropriate letters, as recommended in the General Counsel's Report dated October 10, 1996.

5. Close the file with respect to Karen Huntsman.

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

Attest:

10-17-96
Date

Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Thurs., Oct. 10, 1996 2:19 p.m.
Circulated to the Commission: Thurs., Oct. 10, 1996 4:00 p.m.
Deadline for vote: Wed., Oct. 16, 1996 4:00 p.m.

lrd

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 18, 1996

Jan Witold Baran
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 4208
Friends of Bob Bennett Senatorial
Campaign Committee, and
Stanley R. deWaal, as treasurer

Dear Mr. Baran:

On June 25, 1996, the Federal Election Commission found reason to believe that your client, Friends of Bob Bennett Senatorial Campaign Committee ("the Committee"), and Stanley R. deWaal, as treasurer violated 2 U.S.C. §§ 434(a)(6)(A) and 441a(f). At your request, on October 16, 1996, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If your clients agree with the provisions of the enclosed agreement, please sign and return it, 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.

On October 16, 1996, the Commission determined to take no further action against the Committee and its treasurer with respect to transactions involving contributor Karen H. Huntsman. Additionally, you should be aware that the total amount of excessive contributions set forth in the proposed conciliation agreement is $13,450, rather than the $11,450 discussed in the Committee's factual and legal analysis.

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

Sincerely,

Peter G. Blumberg
Attorney

Enclosure
Conciliation Agreement

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 18, 1996

Dennis M. Flannery
Margaret Ackerly
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420

RE: MUR 4208
Karen H. Huntsman

Dear Mr. Flannery and Ms. Ackerly:

On July 16, 1996, your client, Karen H. Huntsman was notified that the Federal Election Commission found reason to believe that she violated 2 U.S.C. § 441a(a)(1)(A). On August 26, 1996, Ms. Huntsman submitted a response to the Commission's reason to believe finding.

After considering the circumstances of the matter, the Commission determined on October 16, 1996, to take no further action against Ms. Huntsman, and closed the file as it pertains to her. 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.

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

Sincerely,

Peter G. Blumberg
Attorney

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FACSIMILE

November 14, 1996

Jan Witold Baran
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 4208
Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. deWaal, as treasurer

Dear Mr. Baran:

On October 22, 1996, you received the Commission's proposed conciliation agreement for Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. deWaal, as treasurer, in relation to MUR 4208. As noted in the letter accompanying the proposed agreement, the pre-probable cause conciliation period for this matter ends on November 21, 1996. I reminded your colleague, Scott Harris, of this deadline during our phone conversations of November 6 and November 8, 1996. In light of the approaching deadline, I encourage you to respond to the agreement forthwith. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Peter G. Blumberg
Attorney

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 4208
Friends of Bob Bennett Senatorial Campaign Committee and Stanley R. de Waal, as treasurer	)	**SENSITIVE**

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On June 25, 1996, the Commission found reason to believe that the Friends of Bob Bennett Senatorial Campaign Committee ("the Committee"), and Stanley R. de Waal, as treasurer, violated 2 U.S.C. § 441a(f) by receiving excessive contributions totaling $35,656 from individuals through staff advances and direct contributions. The Commission also found reason to believe that the Committee violated 2 U.S.C. § 434(a)(6)(A) by failing to file 48-hour disclosure reports totaling $649,001. On October 16, 1996, the Commission entered into conciliation with the Committee prior to a finding of probable cause to believe and approved a proposed civil penalty

II. DISCUSSION

III. RECOMMENDATIONS

1. Accept the attached conciliation agreement with respondent Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. de Waal, as treasurer;

2. Close the file; and

3. Approve the appropriate letter.

3/5/97
Date

Lawrence M. Noble
General Counsel

Attachments

1. Letter from Committee.
2. Proposed conciliation agreement

Staff assigned: Peter G. Blumberg

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Friends of Bob Bennett Senatorial Campaign Committee and Stanley R. de Waal, as treasurer.	)	MUR 4208
	)	
	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on March 11, 1997, the Commission decided by a vote of 5-0 to take the following actions in MUR 4208:

1. Accept the conciliation agreement with respondent Friends of Bob Bennett Senatorial Campaign Committee and Stanley R. de Waal, as treasurer, as recommended in the General Counsel's Report dated March 5, 1997.

2. Close the file.

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

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

Attest:

3-11-97
Date

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

Received in the Secretariat: Wed., Mar. 05, 1997 3:47 p.m.
Circulated to the Commission: Thurs., Mar. 06, 1997 11:00 a.m.
Deadline for vote: Tues., Mar. 11, 1997 4:00 p.m.

bjr

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 19, 1997

Jan Witold Baran
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 4208
Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. deWaal, as treasurer

Dear Mr. Baran:

On March 11, 1997, the Federal Election Commission accepted the signed conciliation agreement submitted on your client's behalf in settlement of a violation of 2 U.S.C. §§ 441a(f) and 434(a)(6)(A), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed 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.

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.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Peter G. Blumberg
Attorney

Enclosure
Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. deWaal, as treasurer	)	MUR 4208

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its responsibilities under 2 U.S.C. § 438(b). The Commission found reason to believe that the Friends of Bob Bennett Senatorial Campaign Committee ("the Committee"), and Stanley R. deWaal, as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(a)(6)(A).

NOW, THEREFORE, the Commission and the Friends of Bob Bennett Senatorial Campaign Committee, 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 Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. deWaal, as treasurer, and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. The Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. deWaal, as treasurer, have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. The Friends of Bob Bennett Senatorial Campaign Committee, and Stanley R. deWaal, as treasurer, enter voluntarily into this agreement with the Commission. Stanley R. deWaal was not the treasurer of the Committee at the time of the events in question. He is named as a Respondent herein only in his capacity as the current treasurer of the Committee.

IV. The pertinent facts in this matter with respect to the Friends of Bob Bennett Senatorial Campaign Committee are as follows:

1. The Friends of Bob Bennett Senatorial Campaign Committee is the authorized committee of Senator Robert F. Bennett, who was a 1992 candidate for the office of United States Senator for Utah.

2. The Friends of Bob Bennett Senatorial Campaign Committee is a political committee within the meaning of 2 U.S.C. § 431(4).

3. Michael Tullis, a Committee staff member made advances through the use of his personal credit card to the Committee for his travel and subsistence expenses, the travel and subsistence expenses of others, campaign office expenses, media expenses, and other miscellaneous items. Four charges for newspaper advertising totaling $21,109 and one charge for the purchase of a computer constitute the majority of the

$22,206. On June 1, 1992, Mr. Tullis' outstanding credit balance was at its highest level, totaling $22,206. Since these advances, the Committee has repaid Mr. Tullis in full for his expenses.

4. Contributions totaling $13,450 in excess of contribution limitations were received by the Committee, out of the $3,788,271 received by the Committee during the entire 1991-92 election cycle. The excess contributions were refunded to the contributors after the Commission's Interim Audit report identified the contributions.

5. The primary and the general elections for the Senate in Utah were held on September 8, 1992 and November 3, 1992, respectively. Between August 19, 1992 and September 6, 1992 and between October 14, 1992 and November 1, 1992, the Committee received 6 contributions totaling $600,000 from Senator Bennett that were not reported within 48 hours of receipt. In addition, the Committee received 31 contributions totaling $49,001 from other individuals that were not reported within 48 hours of receipt. The Committee did properly report 94 other contributions within 48 hours of receipt.

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

of a candidate in violation of any limitation imposed on contributions and expenditures. 2 U.S.C. § 441a(f).

7. Under 11 C.F.R. § 116.5(b), expenditures made on behalf of a political committee by an individual from his or her personal funds, or advances, are contributions unless exempt from the definition of contribution under 11 C.F.R. § 100.7(b)(8), or unless they are made for an individual's personal transportation expenses, and for the usual and normal subsistence expenses of an individual who is not a volunteer, where such expenses are incurred while the individual is traveling on behalf of a candidate. This exemption only applies, however, if the individual's transportation and subsistence expenses are reimbursed within sixty days if the advance was paid by credit card transactions or thirty days in other cases.

8. The principal campaign committee of a candidate must notify the Clerk of the House, the Secretary of the Senate, or the Commission, as appropriate, in writing, of any contribution of $1,000 or more received by any authorized committee of such candidate after the twentieth day, but more than 48 hours before, any election. 2 U.S.C. § 434(a)(6)(A); 11 C.F.R. § 104.5. Notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate, the office sought by the candidate, the identification of the contributor, the date of receipt, and amount of the contribution. *Id.* This required notification shall be in addition to all other reporting requirements under the Act. 2 U.S.C. § 434(a)(6)(B).

V. 1. The Friends of Bob Bennett Senatorial Campaign Committee and Stanley R. deWaal, as treasurer, violated 2 U.S.C. § 441a(f) when they received excessive contributions from Michael Tullis totaling $22,206 and the other contributions herein totaling $13,450.

2. The Friends of Bob Bennett Senatorial Campaign Committee and Stanley R. deWaal, as treasurer, violated 2 U.S.C. § 434(a)(6)(A) when they failed to report 37 contributions received on 14 separate dates within 48 hours of receipt.

3. The Respondents contend that none of these violations were knowing or willful.

VI. The Friends of Bob Bennett Senatorial Campaign Committee and Stanley R. deWaal, as treasurer, will pay a civil penalty to the Federal Election Commission in the amount of $55,000, 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 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. The Friends of Bob Bennett Senatorial Campaign Committee and Stanley R. deWaal, as treasurer, 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

BY: Kim Bright-Coleman March 17, 1997
Kim Bright-Coleman Date
Associate General Counsel

FOR THE RESPONDENTS:

February 26, 1997
Jan Witold Baran Date
As Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 19, 1997

Dennis M. Flannery
Margaret Ackerly
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420

RE: MUR 4208
Karen H. Huntsman

Dear Mr. Flannery and Ms. Ackerly:

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,

Peter G. Blumberg
Attorney

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 19, 1997

Alan C. Ashton
1028 East 690 South
Orem, UT
84058

RE: MUR 4208

Dear Mr. Ashton:

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.

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Sincerely,

Peter G. Blumberg
Attorney

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 19, 1997

Michael Tullis
1164 West 850 North
Centerville, UT
84014

RE: MUR 4208

Dear Mr. Tullis:

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,

Peter G. Blumberg
Attorney

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 19, 1997

Arlen W. Crouch
President
Franklin Quest Co.
2200 Parkway Blvd.
Salt Lake City, UT 84119-2099

RE: MUR 4208

Dear Mr. Crouch:

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,

Peter G. Blumberg
Attorney

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 19, 1997

The Honorable Robert F. Bennett
United States Senate
431 Dirksen Building
Washington, D.C. 20510-4403

RE: MUR 4208

Dear Senator Bennett:

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,

Peter G. Blumberg
Attorney

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4208

DATE FILMED 4-1-97 CAMERA NO. 4

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