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Merrill Cook
631 Sixteenth Avenue
Salt Lake City, Utah 84103
Telephone: 801-323-0135

February 9, 2001

General Counsel's Office
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 4621

To Whom it May Concern:

Please find enclosed Statement of Respondent, Merrill Cook, re: MUR 4621 which I am both faxing to you today and also mailing to you by certified mail on February 9, 2001, to insure that I meet the February 15, 2001, deadline for submission to your office.

I appreciate the opportunity to conciliate this matter with the FEC and ask that you consider the enclosed statement carefully.

Please be in touch with me if I can be of further assistance.

Sincerely,



Merrill Cook

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COMMISSION
OFFICE OF GENERAL
COUNSEL
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STATEMENT OF RESPONDENT MERRILL COOK
Re: MUR 4621

The Federal Election Commission should not have found reason to believe that the Cook Campaign Committee and other respondents violated either 2USC441 or 2USC443 during the 1996 election cycle. This statement should demonstrate to the Commission that no action should be taken in this matter.

Is a written contract always considered an expenditure the date the contract, promise, or obligation is made? After telephone conferences with the FEC in 1996, the Committee thought this: If it is understood and agreed that payments are due as progress continues under a written agreement, and periodic payments are to be made, based on the progress, then the date the periodic payment is due is considered an expenditure as of the date the periodic payment is due. In the 3/5/96 Cook/Nielson agreement, the convention phase called for a \$40,000 sum for management from March 5 to May 5. The treasurer of the Cook Committee asked the FEC in early 1996 regarding the periodic payments, as work progressed under the \$40,000 management portion of the 3/5/96 written agreement and understood that showing the expenditures as of the date they were made was the correct way to report the expenditures in fulfillment of the Committee's 3/5/96 written contract obligation with a 14-day termination clause.

Much of the confusion or difficulty the Committee may have run into revolves around this point. During 1996, the Committee was earnestly trying to get it right as the numerous telephone calls demonstrate. The Commission should have some tolerance, especially since the Committee is willing to amend its reports and make certain of its FEC reporting of a written contract in the future.

Also, it is important to understand that a disputed or an actual debt can arise from a written contract, but only if the obligation is really owed by the Committee for the work performed. If work is yet to be performed, an obligation does not exist until the work is performed. A debt needs to be disclosed on the FEC report if it is an actual debt, or even if it is a disputed debt where one of the parties to the debt believes the work has been performed, and the other party does not believe the work has been performed.

The disclosure requirement says a committee must report disputed debts if a creditor has provided something of value to the political committee. When both sides agree that nothing of value has been provided by a certain date, then no debt or even disputed debt needs to be disclosed. Agreements cause debts to be created if work is done that is not paid for at any particular instant of time that work is or has been done that hasn't been paid for. When an advance payment is made for a particular amount of work, then a debt cannot be created for that particular work, since it has already been paid for. Furthermore, for out-of-pocket expenses, normal business practice would indicate that if the Committee or campaign bought 600 hot dogs, and

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the vendor has agreed to get paid in 30 days, then a debt arises only if the creditor doesn't pay for the hot dogs within the 30-day period.

Avis Lewis, the Committee treasurer in 1996, made numerous telephone calls to the FEC regarding expenditures under the 3/5/96 written agreement. Some of the confusion may have been due to miscommunications or misperceptions of exactly what the written agreement entailed and how the parties agreed to make advance or progress payments under the agreement.

There were no allegations by Nielson of having debts or obligations due him until after the election was over in November, 1996. Any billing statements or invoices from Nielson notwithstanding, there was no "accumulation of debt over the entire course" of the business relationship.

Now to the pertinent facts corresponding to the Commission's January 9, 2001 letter to Jay Gurmankin

_____ Cook for Congress committee did not fail to accurately report a debt of \$20,000 in the 1996 April Quarterly report, the 4/14/96 report, or the 6/5/96 report. On March 31, 1996, approximately 41.6% of the management work during the convention phase had been completed under the \$40,000 convention phase 3/5/96 agreement. By March 31, 50% of the \$40,000 had been paid. Approximately \$3,600 was, therefore, paid in advance as of March 31, 1996. By the time of the 4/14/96 report, 60 % of the \$40,000 had been paid, and 66% of the work had been done. And, as of the 6/5/96 report, 100% of the \$40,000 had been paid, and 100% of the work had been done.

On the surface, it appears that since, as of 4/14/96, only 60% had been paid and 66% of the work had been completed, then the committee should have reported a debt of \$2,400. This would be true if you based it entirely on which checks the treasurer actually assigned to the \$40,000 convention management portion of the convention phase. The actual situation, however, is that on 4/14/96, the Committee had advanced Nielson a considerable amount above \$2,400 for all the portions of the convention phase beyond just the management portion. To understand this, the Commission needs to study the table on the next page entitled, "Accounting By Contract," which demonstrates that, far from being a debtor to Nielson at any time prior to the election in November, the Committee advanced Nielson considerable amounts of money so that he could carry out the assignment for the Cook Committee--an assignment that Nielson, himself, expressed was "far bigger than any other assignment" he had carried out before.

At the time of the written contract signing on 3/5/96, Nielson told Cook that he would need prepayments or advances in order to fulfill his responsibilities under the written contract, and Cook agreed. As of 4/14/96, for example, he had received advances of \$3,000 on 3/26/96 to help him get a telephone operation underway, as well as a \$9,000 advance on 4/1/96, to help him start paying day workers for the telephone surveys. Nielson told Cook he normally gave his customers 30 days to pay for the phone surveys,

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ACCOUNTING BY CONTRACT

PRE-CONVENTION/CONVENTION

MANAGEMENT/ CONSULTING/OFFICE	POLLING/GOTV	FUNDRAISING/PAC	EXPENSE	BONUS	SUBTOTAL	PAID	BALANCE
40,000	21,385	-0-	38,701	5,000	105,086	103,000	2,086
			*(9,261)		*(9,261)		*(9,261)
40,000	21,385	-0-	29,440	5,000	95,825	103,000	(7,175)

PRIMARY CYCLE

MANAGEMENT/ CONSULTING/OFFICE	POLLING/GOTV	FUNDRAISING/PAC	EXPENSE	BONUS	SUBTOTAL	PAID	BALANCE
8,000	9,252	-0-	6,291	5,000	28,543	56,289	(27,746)
			*(1,669)		*(1,669)		*(1,669)
8,000	9,252	-0-	4,622	5,000	26,874	56,289	(29,415)

GENERAL CYCLE

MANAGEMENT/ CONSULTING/OFFICE	POLLING/GOTV	FUNDRAISING/PAC	EXPENSE	BONUS	SUBTOTAL	PAID	BALANCE
18,000	12,319	28,763	20,673	25,000	104,755	70,116	34,639
		** (11,280)	*(1,886)		*/** (13,166)	***250.00	*/** (13,416)
18,000	12,319	17,483	18,787	25,000	91,589	70,366	21,223

TOTAL CAMPAIGN

MANAGEMENT/ CONSULTING/OFFICE	POLLING/GOTV	FUNDRAISING/PAC	EXPENSE	BONUS	SUBTOTAL	PAID	BALANCE
66,000	42,956	17,483	52,849	35,000	214,288	229,655	(15,367)

* INDICATES "ARTISTIC CHARGES" OR "UPCHARGES" OR DOUBLE BILL

** INDICATES PAC DISPUTE

*** INDICATES CHECK NOT CREDITED

PAYMENTS MADE BY COMMITTEE TO RT NIELSON DURING 1996

DATE	CHECK #	AMOUNT
3/5/96	1	4,999.00
3/5/96	2	8,000.00
3/5/96	3	1,285.00
3/13/96	102	1,214.09
3/13/96	103	4,000.00
3/19/96	109	5,112.36
3/26/96	111	9,421.55
4/1/96	114	9,000.00
4/1/96	115	4,000.00
4/15/96	119	13,967.68
4/29/96	123	2,000.00
4/30/96	125	5,000.00
5/2/96	129	8,000.00
5/6/96	132	27,000.00
TOTAL CONVENTION PHASE		\$103,360.78
5/15/96	136	8,333.33
5/20/96	140	8,333.33
5/31/96	163	8,333.33
6/6/96	167	8,333.33
6/20/96	182	8,333.33
6/21/96	187	579.00
7/3/96	195	8,333.33
7/3/96	196	5,712.44
Total Primary Phase		\$56,291.42
8/7/96	203	5,000.00
9/5/96	212	8,000.00
9/16/96	215	5,000.00
9/18/96	216	5,000.00
9/19/96	217	2,500.00
10/1/96	227	8,000.00
10/7/96	232	8,000.00
10/7/96	233	250.00
10/15/96	245	1,900.00
10/15/96	248	2,715.84
10/21/96	252	8,000.00
10/29/96	263	8,000.00
Total General Cycle		\$70,365.84
Total Payments to RT Nielson for Campaign		\$230,018.04

Even a cursory examination of the written agreement alongside this schedule of actual payments from the Cook Committee to Nielson shows that Cook, far from being a debtor, was continuously advancing payments to Nielson under the contract.

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once they were complete, but this was bigger, more intense work, and to get the supplemental day workers, an advance would be needed. Cook agreed. Although the total advance as of 4/14/96 would have been less than the \$12,000, it was far more than \$2,400.

The Committee did not fail to accurately report a debt of \$9,000 in the '96 April Report. The \$9,000 paid on April 1, 1996 was actually an advance on day workers Nielson was hiring temporarily at the end of March and early April for telephoning. He normally gives his customers 30 days to pay for this work, and then only after he has totaled up all the hours on their time cards and applied the rate. He wanted to be able to pay some of the telephoners quickly before the job was done. That is why we agreed to the advance that would be reconciled later. That was the pattern under which Nielson operated with Cook. Nielson normally gave customer a certain time to pay, but since the job with Cook was by far the biggest job he ever had, Cook consistently gave Nielson advances for work he would be performing, and they agreed to reconcile according to the written contract later. Nielson told Cook that he would be unable to assemble the people he needed to do the Cook job unless Cook would help him out with advances. Cook agreed, and he should not be punished for trying to help Nielson.

The Committee did not fail to accurately report a debt of \$25,000.03 on the 6/5/96 report. It did not fail to report payments that were made in the 6/30/96 report, and the 9/30/96 report, and that the primary management fee was paid off in the 9/30/96 report. The \$50,000 estimate (to be reconciled according to the 3/5/96 written agreement after the Primary) for the Primary phase to cover the expected cost of various services, the management being just one, proceeded as follows:

- By 6/5/96 report, 50% of the \$50,000 paid, 50% of the work completed
- By 6/30/96 report, 84% of the \$50,000 paid, 100% of the work completed
- By 9/30/96 report, 100% of the \$50,000 paid, 100% of the work completed

Does this mean the Committee should have shown a debt of \$8,333 on the 6/30/96 report? Yes, if you look narrowly at only the Committee checks the treasurer allocated to management, etc., during the Primary phase. But the correct answer is "no" because by 6/30/96, the overall arrangement had the Committee's advancing Nielson some \$27,000, according to the Accounting By Contract. It was understood that all of this would be reconciled according to the written contract. Please look at the 3/5/96 written agreement, which Nielson drafted. It specifically states the agreement or contract can be

modified only in writing. The \$50,000 was an estimate to facilitate the written agreement and enabled Cook to pay Nielson, as progress continued, by keeping the payments somewhat in advance of the actual work.

The Committee did not fail to report \$2,175 as a debt or disputed debt in the 6/5/96 report. Nothing in the 3/5/96 agreement, the invoices received from Nielson, or the disbursements listed in the 1996 FEC reports matches \$2,175. I assume the Committee is actually referring to invoices #96151, #96153, and #96163, all for mail and miscellaneous and printing expenses which add up to \$2,189.55 and were dated 5/15/96, 5/21/96, and 5/31/96. For Nielson, out-of-pocket expense invoices like this always had 30 days to pay. They were paid within 30 days, and they were not debts at any time.

The Committee did not fail to report \$5,000 as a debt in the 6/30/96 or the 9/30/96 report (I assume the Commission made a typographical error). It was understood right after the Primary in late June that the \$5,000 bonus Nielson had earned for the Primary victory would be reconciled according to the written contract, and that the Committee would get credit for all advances not used up by Nielson's performance. Consider: On May 6, Nielson billed a win bonus of \$5,000 for the convention—all according to the written contract. But he billed another convention win bonus of \$5,000 on October 2. He invoiced a Primary election win bonus of \$5,000 on 6/26/96 (again, according to the written contract), but then he billed another Primary win bonus of \$50,000 on 7/29/96. He billed a general win bonus of \$25,000 (according to the written agreement) but discovery in the Nielson lawsuit showed that Nielson billed some of these, as well as other invoices dated in July and August well after the campaign in November. The fact is, Nielson and Cook both knew that at the end of June 30, 1996, Cook had advanced approximately \$27,000 to Nielson—plenty to cover the \$5,000 bonus promised in the written agreement. The bonuses that Nielson earned in 1996 totaled \$35,000. AT NO TIME DURING 1996 DID ANY OF THESE BONUSES BECOME A DEBT. Also, the Commission should know that \$5,000 payments to Nielson during August and September were for the general phase, even if the treasurer occasionally allocated a check to the wrong invoice. The treasurer mistakenly even allocated checks to invoices and invoice numbers that Nielson had totally voided, including bonus invoices that had been voided.

It is hard to determine whether the Commission is referring to invoices for \$12,000 or \$9,251.97; or both in March and June. The committee did not fail to report as a disputed debt invoices owed for GOTV calls during the 1996 convention period in the 6/30/96 report. Regardless of which invoices the Commission is referring to, the following facts apply:

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GOTV calls were billed like other out-of-pocket expenses because Nielson would hire day laborers, and after the work was done and all the hours and wages added up, he would bill Cook, and Cook would have 30 days to pay.

- On June 30, the Committee had advanced considerable cash to Nielson for his work performed under the agreement.
- All polling and GOTV calls made during the convention period were paid prior to the convention of 5/4/96. (See Accounting by Contract, convention phase).
- It was not humanly possible to report a disputed debt before 6/30/96 when no dispute occurred prior to the end of the election. Nielson never raised the issue of a disputed debt until after the election. When Nielson did raise the issue of a dispute, the Committee acted as soon as possible to show disputed debts, even though the Committee never believed an actual debt was owing.

The Committee did not fail to report a debt or disputed debt of \$150,000 in the 6/30/96 report. The Committee did not further fail to report payments made on this continuing debt in the 9/30/96 report, the 10/16/96 report, or the 11/25/96 report. It is hard to tell what the Commission is referring to, since Nielson billed the following:

- Invoice #96182, dated 7/29/96, for \$150,000
- Invoice #96199, dated 7/29/96, for \$50,000
- Invoice #96200, dated 7/29/96, for \$100,000

The Commission may be referring to #96182, which Nielson said was a mistake and voided it, or it may be referring to invoice #96199 plus #96200. Nielson voided #96199, since it was also a mistake. (He invoiced the Primary bonus erroneously a second time, and then for \$50,000, not \$5,000.) Discovery in the lawsuit also showed Nielson generated either one, two, or all three of these invoices after the election was over, and then dated them 7/29/96.

Several facts need to be understood:

- No debt or disputed debt for \$150,000 for the period ending 6/30/96 ever existed. Nielson dated an invoice for \$150,000 with the date 7/29/96 and two more invoices for \$50,000 and \$100,000 with the same date of 7/29/96. These were all outside the 6/7/96-6/30/96 reporting period. At least one or two, and possibly all three were backdated at some point after the election, according to discovery during the Nielson lawsuit. He voided the \$150,000

invoice outright; he voided the \$50,000 invoice outright, saying he meant to send a \$5,000 invoice for bonus, even though he had already billed for bonus. This was also voided by Nielson. The voiding of those invoices and at least some of the generation of those invoices was done after the November election.

- Exactly when the \$100,000 invoice was dated 7/29/96 is a matter of dispute. Certainly Merrill Cook never saw that invoice until at least late October, 1996. The \$100,000 invoice is at the core of the Cook-Nielson lawsuit dispute, which continues. Nielson contends the \$100,000 invoice was the result of an oral agreement between himself and Cook. Cook denies same. The lawyer for Nielson withdrew their claim of an oral agreement and claimed, instead, the \$100,000 invoice was part of an oral modification of the written agreement. The jury in April, 2000 found in favor of Nielson on that, but on January 18, 2001, the Utah Supreme Court, in a move that bypasses the appellate court, agreed to hear the Cook appeal, which contends that not only was there NO oral modification of the written agreement, but that, as a matter of law, this particular written agreement could not be part of an oral modification of the written agreement, since this particular written agreement of 3/5/96 can be modified only in writing. Whether Cook or Nielson prevails is not the point, as far as the FEC is concerned, but what has been established beyond doubt is that there was no dispute about this so-called "debt," or any knowledge of an actual debt until after the November election. When Nielson first raised the issue that money was owed him after the election, Nielson and Cook sat down and initially agreed to list a disputed debt in the FEC report of approximately \$38,000. Later, and again, after the election, he made claims escalating to \$60,000, then \$90,000, and then \$175,000. As soon as the Committee was aware of the dispute, it listed these disputed amounts in its FEC reports. It is absolutely not true, as the FEC apparently believes, that this deteriorating relationship and dispute was in any way occurring before the election in November, 1996. Every bit of the deterioration of the working relationship, the disputed debts, and even the knowledge of potential debts by the Committee took place AFTER the November, 1996, election.
- The time period when Nielson's after-the-fact invoices attempted to cheat Cook was between 6/30/96, where his billing showed \$30,384 due him from Cook, to 9/30/96, where he showed \$151,455 due him from Cook. The fact that Nielson claims another \$121,000 for the three months when Cook had paid him during those three months the following:

DATE	AMOUNT
7/3/96	8,333.33
7/3/96	5,712.44
8/7/96	5,000.00
9/5/96	8,000.00
9/16/96	5,000.00
9/18/96	5,000.00
9/19/96	2,500.00
Total	\$39,545.77

i.e., an additional \$160,000 for three months, and the campaign was at a virtual standstill during July and August, shows how wild his billing was. But there was no report of a dispute to the FEC because Cook did not see these invoices until late October, just before the election ended, and it wasn't until late October that Nielson told Cook not to worry about the "big invoices," since everything would be reconciled according to the contract when the campaign was over. There are no indications, other than the back-dated invoices, that the Cook campaign's disputed indebtedness arose earlier than is reflected in the reports that were filed.

In summary, the disputed debt, according to Nielson, was approximately \$38,000, for purposes of the 11/25/96 report. There were no disputed debts in 1996 before that report. In fact, Nielson, all along, had been thanking Cook for the advances on the contract! And the disputed debt of \$100,000 or \$150,000 or \$175,000 (approximately) was all reflected on the end-of-year report when we found out the extent of the dispute with his late-December to mid-January letter to us, as well as the lawsuit filed in mid-January, 1997. After Cook told Ron Nielson in late December that David Irvine, who later became his Chief of Staff, would be accompanying him to Washington, D.C. to head his transition effort instead of Ron, himself, the relationship with Nielson deteriorated quickly, and they began having a bitter dispute. Again, all this was in the late December-January time period.

From the earliest knowledge of these disputed amounts, the Cook Committee did everything it could to disclose these disputes to the FEC in its telephone calls and its reports. The idea that the Cook Committee failed to report disputed debts is totally inaccurate!

The Committee did not fail to report \$10,616.77 as a disputed debt on the 9/30/96 report. The Committee did not fail in subsequent reports to report the \$10,616.77 as a disputed debt, as long as it remained unresolved.

Facts:

The \$10,616.77 is composed of invoices #96184, dated 7/29/96, for \$1,837.89, #96212, dated 9/12/96, for \$3,249.04, #96213, dated 9/12, for \$2,666.63, and #96235, dated 9/30 for \$2,862.61. These invoices covered miscellaneous costs, postage, printing, catering,

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travel expenses. The last three invoices would not have become debts until after the 9/30/96 report, even if there had not been a considerable cash advance from the Committee to Nielson to pay for these last three invoices. As they were out-of-pocket expenses, the Committee had 30 days (beyond 9/30/96) to pay for them. Apart from that, the fact is that the accounting records clearly show that Nielson began the General cycle with a \$27,000 advance, and progress payments were made on 8/2/96, 9/5/96, 9/16/96, 9/18/96, 9/19/96, 10/1/96, 10/7/96, 10/15/96, 10/16/96, 10/21/96, and 10/29/96—all to make sure that whether Nielson had services or out-of-pocket expense invoices—they were covered. Knowing by October 31, 1996, that Cook had overpaid the expected work of every category from the 3/5/96 contract, Cook stopped making payments to Nielson, believing that something of a refund would be due the Cook Committee. The Accounting by Contract and list of payments made to Nielson prove this. There was no dispute until late December that would have caused the Committee to report the disputed debts which Cook clearly reported when the dispute was first made known in November, 1996 and January, 1997.

The Committee did not fail to report \$1,083.31 as a disputed debt, beginning with the 9/30/96 report, or in subsequent reports. The facts are:

- Nielson sent invoice #96256, dated 10/16/96 for miscellaneous expenses of 1,083.31. It could not have been reported on the 9/30/96 report, since it had not been invoiced or in any way received by the Committee at the time of the 9/30 report. If the Committee did not have an advance with Nielson in November, it should have been reported by the 11/25/96 report, since we always had 30 days to pay miscellaneous and out-of-pocket invoices like this one was. The reason that it did not need to be reported is that it was, in fact, paid for by the time it became due on November 16. The first time Nielson ever claimed the advances were not covering his legitimate invoices in performance of the 3/5/96 written agreement was just before the November 25 FEC report when he sat down with Merrill Cook and recommended showing a debt of approximately \$38,000 in that report. Once the Committee knew of Nielson's allegation of disputed debt beyond the \$38,000, they immediately reported them also.

Phillips, Twede, Spencer

This question involves the 11/25/96 report, the 12/31/96 report, and the 6/20/97 report.

In late September or early October, 1996, Evan Twede, the man who did all the advertising for Merrill Cook from late 1993 to October 1996, having affiliated himself with various advertising agencies during this period

of time, including Evans and Twede, Twede & Evans, and Phillips Twede Spencer (PTS), suddenly left the campaign without notice to accept a high-paying job in Seattle. Cook had dealt only with Twede, not his partners, Spencer or Phillips. The relationship between Cook and Twede had been close for years. Cook sought out Twede in '94 and in '96 to handle his campaign. Twede wanted only to do the advertising, but recommended that for management, consulting, polling, etc., Cook take on RT Nielson. Twede had a type of partnership agreement with Nielson for non-advertising campaign services. At any rate, prior to October, 1996, Cook had no relationship or knowledge of Twede's partners, Phillips and Spencer. PTS had no more involvement after early October, except to finish running the ads Twede had handled. Cook had dealt with no one at PTS except Twede.

When it came time to file the 11/25/96 report on 12/4/96, the treasurer reported that \$6,583.99 was owed PTS as debt. Evan Twede supplied that number to the Cook Committee. Evan Twede was the only person at PTS that the Committee had dealt with, the Committee had no knowledge that a partner of Twede's in PTS felt Cook owed some additional money. There was no dispute going on—just a difference of opinion within PTS. The partner, Twede, who had left nearly two months earlier told us we owed \$6,583.99, and that was accepted at the time by the Committee and was the figure we listed as a debt. Twede did not make us aware at that time, that Phillips, the partner who had not worked with Cook, might have had a different view. Shortly after 12/5/96, Merrill Cook studied Twede's reconciliation. Cook felt that only \$4,012.56 was actually owed. Cook called Twede, and Twede said he thought that sounded correct. The Committee paid the \$4,012.56 on 12/19/96, thinking that PTS would send acknowledgement that all accounts were settled. Now Phillips entered the scene. Around the middle of December, Phillips, for the first time, said he really thought \$16,689.18 was owed. Cook called Twede in Seattle, and Twede told Cook that Phillips was being ridiculous and was just upset that Cook went with KSL for his advertising after Twede left, and that Phillips was just adding some phony charges. Cook thought Twede still spoke for PTS, as Twede promised Cook he would handle any reconciliation of accounts and payments and make sure everything was settled properly. The dispute that occurred in mid-

December, 1996, was a dispute between principles of PTS, or, rather between Twede & Phillips. Twede agreed with Cook that only \$4,012.56 was actually owed, certainly not Phillip's \$16,689, and not even the \$6,583.99 that Twede had thought was the right figure when the November 25 report was prepared. Since Cook was promised that Twede would finish handling all reconciliation for PTS, Cook relied on that promise, thinking Twede spoke for PTS on this, and that there was no dispute. In fact, the \$4,012.56 stopped the assertion from Phillips, and so the Committee thought all was settled. In other words, once Phillips got the \$4,012.56, he did not say another word about additional money owing—until Nielson contacted him in mid-January, 1997.

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In a declaration to the Commission, PTS, through Ted Phillips, a partner in PTS, with whom the Committee had no dealings during the election, may have declared after the fact that he "did not accept the \$4,012 check in mid-December, 1996, as a final settlement, but simply applied it to the outstanding balance," but his silence to the Committee after he received the \$4,012.56 check, the silence continuing until he was agitated by RT Nielson in mid-January to join Nielson by filing an additional lawsuit, showed that during the December and first half of January, there was no dispute between PTS and the Committee, and that by December, at least, both parties agreed the obligations to PTS were taken care of. Mr. Phillips never told the Committee the balance was \$12,676 after the Committee sent the \$4,012 check.

Only in mid- to late January, 1997 did a dispute arise between Cook and PTS, and that was caused by the lawsuit filed by Nielson. Nielson contacted PTS, as he did other vendors, just before he filed his lawsuit in January, 1997, to enlist help from anyone else who might have thought the Cook Committee owed money to them. Phillips, although totally silent from the time he received the Committee's check of \$4,012.56 around December 19, 1996, and being assured by his former partner, Twede, that that was all that was owing from Cook decided, nevertheless, to assert his claim in mid-January. Phillips joined in the very damaging publicity against Cook, which Nielson was spearheading at the time. Only in mid-January did Phillips assert the \$16,000-plus as a dispute (now \$12,676 because of the \$4,012.56 payment). The Committee negotiated for an hour or two with Phillips in mid- to late January, 1997, and agreed to pay \$8,994.09 to settle everything. The Committee immediately (around January 17, 1997) sent an amended report for the 11/25 report, showing that the debt was actually \$13,006.65, as of 11/25. That was simply the \$4,012.56 that Twede thought settled the account plus the extra \$8,994.09 that Phillips insisted would settle the account. The Committee considered this \$8994.09 that Phillips insisted would settle the account as nothing but "blood money" but was sick and tired of the nasty publicity that Nielson and Phillips were creating for newly-sworn-in Congressman Cook.

During the actual reporting period 11/26/96 to 12/31/96 (not 1997—a Commission typo) there is no reason to doubt that the parties were in agreement. When the \$4,012 was sent, it was met with Phillips' deposit into the bank and silence. If he opposed it, he had an obligation to notify the Committee.

There were no serious or protracted negotiations (even though it was the Cook attorney who erroneously gave the Commission this misinformation). In mid-January, Phillips made the allegation of a dispute to the press, and within a day or two (and as the result of one or two hours of negotiation) settled everything for the final \$8,994, and an amendment to the 11/25/96 report was filed. The dispute came after 12/31/96 and so was immediately filed in the 1/17/97 amendment to the 11/25/96 report.

This is the PTS story of the November-December-January time period when Twede had left. Twede had assured the Committee that he would finish handling all the accounting for PTS, even in his absence. The Cook

Committee relied on Twede, as they had been doing since 1994 and should not be penalized for a fight that may have been taking place within PTS., but not conveyed to Cook.

The original 11/25/96 report was filed correctly with a debt of \$6,583.99 disclosed. That is what Twede said it was. On 1/16/97, an amendment to the 11/25/96 report was filed because the Cook Committee had, within only one or two days in mid-January,

(1) received notice of a dispute from Phillips,

(2) gotten a check of \$8,994.09 into Phillips hands with a signed settlement agreement, and

(3) reported all of (1) and (2) in an FEC amendment dated 1/16/97, i.e., the \$13,006.65 debt as of 11/25 (which included the \$4,012 payment of December 19 which the Committee at that time thought settled the dispute, based on representation made by Twede and the apparent silence or acquiescence of Phillips).

When the treasurer filed the year-end report on January 31, 1997, she sent a letter to the FEC saying, "There is also a change in the amount shown on the Phillips Twede Spencer obligation." She did not mean there was any change from what was in the amended 11/25/96 report sent 1/16/97, and the year-end report with respect to what had happened with PTS. She meant that during December, \$4012.56 of the \$13,006.65 obligation that was known and agreed to for the first time in mid-January was paid with \$8,994 obligation left.

In summary, the Committee did not fail to accurately disclose that the debt of \$6,583 in the original 11/25/96 report was an estimate because it was not an estimate. It was an actual number given by Twede, the only partner of PTS the Committee was working with. Phillips raised a question of additional monies in December but made the Committee believe that, in spite of that, he accepted Twede's feeling that only \$4,012 was actually owed by his total silence after the \$4,012 was sent. In mid-January, Phillips raised the \$16,000 question again, very loudly to the media, in concert with Nielson (as a way to get blood money), but within a day or two signed a complete settlement which the Committee promptly disclosed in an amended filing for the 11/25/96 report on 1/16/97.

Finally, the PTS debt the Committee disclosed at year-end December 31, filed 1/31/97, was not a disputed debt, but a real, agreed-upon debt rising from the mid-January agreement with Phillips. It simply did not require a disclosure in the 1997 Mid-Year Report that the dispute was resolved through a negotiated settlement—that disclosure was handled by the 1/16/97 amendment to the 11/25 report. The final debt elimination was accurately reported in the mid-year 1997 FEC report.

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Avis Lewis and Bret Jackman

Corporate employees like Avis Lewis and Bret Jackman are entitled to volunteer for the campaign and even, within certain limits, perform some limited services on company time and on company property. They can make occasional, isolated, or incidental use of corporate facilities, which generally means activity that does not exceed one hour per week or four hours per month, or up to about 5% of the total activity of the employee/volunteer, as long as it does not interfere with the organization's normal activities. Avis and Bret were employees of the company Cook owned, and they were also volunteers on Cook's campaign. They were entitled to volunteer and perform limited services for the campaign on company time and on company property. They were allowed to make occasional use of company property and company facilities. Their campaign volunteer time may have exceeded one hour per week, but in every week and in every month during 1996, they both spent more than full time, or more than 40 hours per week on company business. None of their volunteer campaign activity ever interfered with the company's normal activities. The company incurred no additional costs associated with their volunteer activity. Because they had already worked full time or more than 40 hours per week, none of their volunteer time was on "company time," even if some of it was done during the normal 8-5 business hours. The company incurred no additional costs, other than tiny, incidental costs associated with their volunteer activity. It is silly to believe, for example, that because Avis may have sat at her desk at Cook Associates late at night after she had put in more than full time (more than 8 hours work per day to earn her \$46,100 annual salary) for Cook Associates and then did even several hours more volunteer work to fill out an FEC report that this, in any way disadvantaged Cook Associates or cost Cook Associates anything or represented a corporate contribution to the campaign. It was just a lot more convenient for Avis to use the same desk, rather than having to find some other place to fill out the FEC report that she volunteered to do.

Mr. Cook did not campaign out of the corporate office. Campaign activity from March onward was done out of the campaign office, which is an office arranged for by RT Nielson, and was totally separated from the Cook Associates/Cook Slurry office.

Avis had to work extra hard for Cook Associates in 1996 because she took over many of Cook's responsibilities in the explosives business, since Cook wasn't around to help because of his campaign. Avis Lewis was the only person administering an office that handled all the administrative details of a \$3 million operation. Bret Jackman had to work extra hard for the company in 1996 since Cook could not be at the plant in Lehi because of his campaigning. Bret often traveled the 35 miles to Salt Lake from the Lehi plant on company business to confer with Avis or bring her reports or purchase parts for the plant operation, and he sometimes, during 1996, put campaign lawn signs up on his trips to Salt Lake. This was nothing more

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than incidental use of a company truck and employee to put up lawn signs on the way, doing company business. Cook should not be penalized because he had two employees in Avis and Brett who worked very very hard (gave more than full-time effort) in his business. Both worked well over 40 hours per week on company business and then were very happy to volunteer for Cook's campaign on their own time with only incidental use of company facilities or assets. They are both very hard-working, very decent, strongly patriotic and supportive of Cook's political goals, but both are rather naïve, unsophisticated, and susceptible to being tripped up by a slick attorney during a deposition--an attorney who constantly leaked information to the news media in an effort to help defeat Cook during the two campaigns that ran during the RT Nielson case.

Avis Lewis has been employed by Cook Associates since 1973 (not since the mid 1980's as the FEC believes). For twenty years before that, she worked for Cook's father. Avis Lewis was not only a secretary and bookkeeper. She was the only person in the whole company doing the accounting, payroll, the compliance, the taxes, the accounts payable and receivable, indeed, every administrative task the company did. Being the volunteer treasurer of the campaign was less than 5% of the time those other duties entailed. She volunteered more than one hour per week, but she did not spend one or two days per week on this volunteer activity. That would imply 20-40% of her time. It was less than 5% of her time. Avis Lewis' deposition notwithstanding, she never spent a whole of one or two days, but rather, spent a small part of one or two days volunteering for the campaign during her normal company work effort. Just because a slick lawyer for RT Nielson got her to say something contradictory in a deposition does not take away from the fact that she probably averaged three or four hours per week on volunteer activity out of about a 70 to 80 hour company work week. Cook may not have time cards, but Cook could haul in front of the Commission evidence of all the company work Avis and Bret did for Cook Associates, dba Cook Slurry Company in 1996 and compare it to the FEC treasurer and lawn sign work of Avis and Bret and the volunteer campaign activity would not add up to as much as 5% of the total company work! The campaign volunteering of both employees and both volunteers fall into the category of incidental. It did not go "well beyond incidental use."

It is not true that there is no indication in any of the assembled materials that Cook Associates sought reimbursement for the use of its resources for the benefit of the campaign. The FEC report shows Avis sought and received reimbursement for use of office space for a press conference (a nominal \$21).

The signs that Bret Jackman, took down, transported, and stored ended up in a broken trailer at Cook's Lehi plant. The trailer was not suitable for storage of explosives or any other of Cook Company materials that the other trailers are used for. The trailer where signs were stored was completely out of spec for use even as a trash or garbage trailer.

Bret Jackman was a volunteer, his deposition testimony notwithstanding. His volunteer work on the campaign was definitely less than 5% of his company work for which he was paid. To show how error-

filled some of the deposition testimony is (again, solicited by a slick lawyer), there were no Cook Slurry pump trucks at Lehi in 1996, as they were all in Minnesota. The pickup truck used by Bret to visit Salt Lake a few times a week on company business is very different from what was described in the deposition.

There was no reason to seek reimbursements from the Committee to Cook Associates for Jackman's volunteer effort because they were incidental.

During the 1996 election cycle, Avis Lewis performed her duties as the Committee Treasurer usually at night or on her own time as a volunteer. Even when she performed her duties as the volunteer Committee Treasurer during the 9-5 workday, it was not on company time because she always worked more than 8 hours per day and more than 40 hours per week for the company, regardless of when or how much she was legally volunteering for the campaign. None of her use of the company's facilities and resources cost the company anything but de minimus, or trivialities. It did not exceed incidental use limitations, even if she volunteered more than one hour per week. Reimbursement, other than for the use of the office for a press conference was unnecessary. It simply did not cost Cook Associates anything extra for Avis or Bret's volunteer work, which was incidental.

The respondent understands the Commission may believe what is stated in its "reason to believe" findings, based on depositions of Avis and Bret, but the Commission should be aware that earnest, hard-working, but rather unsophisticated people can be led into saying things by a slick lawyer that may have ended up giving a misimpression of what was happening in 1996 with those two fine employees. Although the volunteer work on the campaign from both Avis and Bret was important and very helpful, the amount of time and effort spent by both of them was minor (less than 5%), as compared with the volume of work they each provided for the company's explosives and research business. None of these volunteer activities increased the overhead or operating costs of the company.

Conclusions

Respondent appreciates the FEC's willingness to conciliate this matter

The Cook Committee does not believe, based on the Berman Gaufin law firm work and the submissions in 1998, that the Committee has had a reasonable opportunity before now to demonstrate that no action should be taken in this matter. The Committee wishes to settle the matter with the Commission. The Committee feels the "reason to believe" findings of the Commission, while wrong, are nevertheless helpful in making sure the Committee, in the future, errs on the side of being more careful in reporting, especially when something could be interpreted in two different ways by reasonable people, such as how to account the \$40,000 for management services in the convention phase, even if progress payments were agreed to as a way to "effectuate the agreement," and would imply recording as the progress proceeds, and the advance payments for the progress are paid. In other words, while the Committee believes it is in compliance with the way it has reported, the Committee agrees to report in the way the Commission is saying in its "reason to believe" findings, that it should, so as always to be on the side of caution.

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