

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL

MAR 26 1 14 PM '01

Merrill Cook
631 Sixteenth Avenue
Salt Lake City, Utah 84103

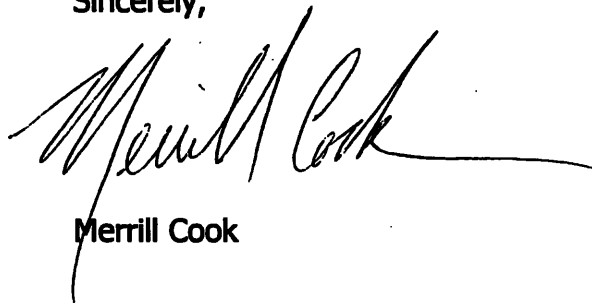
March 19, 2001

General Counsel's Office
% Marianne Abely
Federal Election Committee
999 E Street, NW
Washington, DC 20463

Dear Ms. Abely,

On March 12, 2001, Respondents submitted answers to 5 questions you asked in your March 7, 2001 letter. In the answer to question 5, I said I would try to track down the information about Ron Nielson's backdating invoices after the election was over to July 29, 1996. Please see the enclosed trial testimony transcript from day 5 of the trial pages 85-89.

Sincerely,



Merrill Cook

MUR 4621

21.04.495.2335

written contract and copies of checks paid by the Cook Campaign to Nielson during the three phases of the election. The cash accounting method was used to create the form.

3. No. The reference to "primary management fee" referred to the \$50,000 estimate that Nielson and Cook made during the Primary phase in order to pay Nielson in advance for his work (except out-of-pocket costs) that would be performed under the written agreement for the 6 weeks between the Convention and Primary Election. Nielson requested advances for what he would be owed under the written agreement. The easiest way to give an advance was to estimate what the three sections of the written contract would call for, i.e., (1) fundraising, (2) general consulting & management, and (3) polling/gotv. It was estimated that Nielson would earn approximately \$50,000 for those three things during the Primary phase, and that he could, therefore, pick up a check for 1/6 of the \$50,000 estimate each week--\$8,333. At the end of the Primary, it was to be reconciled according to the written contract.

4. Yes. The Utah Republican convention was in May. In June, Nielson provided \$9,252 of polling/gotv services, which were paid as part of the \$50,000 estimate discussed in Question 3. In October or early November, another \$12,319 polling/gotv service was provided. The latter were paid for by the \$27,746 advance from late June and/or some part of the 12 payments made to Nielson during August, September, and October, 1996. \$

★ 5. It is part of the deposition and/or the trial transcript. It was part of RT Nielson's deposition and/or trial testimony. Respondent will try to track this down over the next week or two from his deposition and provide it to the Commission. In Respondent's answer under sub-section G, Respondent was referring to invoices #96182, #19199, and #96200 and made the statement, "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." Documentation of this will be sent to the Commission within a couple of weeks.

★ See attached trial testimony of R.T. Nielson taken on the 5th day of trial pages 85-89 inclusive.

Page 82

Page 84

1 more complex, yes, but a lot of them are with just logo-type
2 mockups.

3 Q Well, the Merrill Cook for Congress theme was a
4 common theme regardless of the nature of the project?

5 A That's correct.

6 Q Okay. So you were advertising Mr. Cook's campaign
7 and his candidacy?

8 A Correct.

9 Q Yesterday on cross-examination you indicated, I
10 believe, that you had reviewed every invoice that Merrill Cook
11 had been sent by your company during the 1996 campaign. Do you
12 recall that testimony?

13 A Well, I have reviewed every invoice that we have sent
14 to Merrill Cook's --

15 Q But you said that you had reviewed -- strike that.

16 You had seen Merrill Cook review every invoice that
17 you had sent to his company. Do you recall that testimony?

18 A Yes, I do.

19 Q Okay. Have you had a chance to consider that
20 testimony once you saw it in the transcript?

21 A Yes.

22 Q Why don't you tell me -- why don't you clarify that,
23 if it needs clarification.

24 A It needs clarification. I made a mistake when I
25 answered that question. The fact that I have reviewed

1 Q Okay. Thank you. Returning to this discussion about
2 what Mr. Cook calls up-charges, did you discuss with Mr. Cook
3 the notion that R. T. Nielson may be making up-charges to some
4 items because of creative work or other reasons?

5 A Yes.

6 Q On how many occasions, roughly?

7 A Well, I believe the majority of these conversations
8 occurred early on. That would be during the convention cycle
9 or just prior to. We talked about it a couple of times.

10 Q Well, can you tell me -- or tell the jury about those
11 discussions?

12 A Well, at the time that we -- we signed this original
13 agreement, Exhibit No. 17, we discussed the possibility of R.T.
14 Nielson Company taking on advertising projects and that there
15 would be situations that would arise where it would be more
16 prudent for R.T. Nielson Company to conduct these advertising
17 projects than it would be for, say, Phillips Tweed or anyone
18 else. So we discussed that if we were to take on these
19 advertising projects, they would be above and beyond what the
20 other work detail was that we were talking about. So obviously
21 we would charge, and that was our discussion, that we would
22 charge a fair rate for taking on this creative design work.

23 Q Were there other circumstances that you discussed
24 with Mr. Cook where other types of up-charges might be applied?

25 A Yes.

Page 83

Page 85

1 personally all of the invoices obviously that have gone to
2 Merrill Cook and I have met with Merrill Cook and reviewed all
3 the outstanding invoices up through the time of possibly
4 December. But after we were no longer speaking or talking in
5 January, there were invoices that were sent to his office and
6 those invoices obviously I have not met with Merrill Cook and
7 reviewed because I have not met with Merrill Cook. So when
8 I -- my comment to that question should have been I have
9 reviewed all outstanding invoices at that time with Merrill
10 Cook.

11 Q So you had sat down with Merrill Cook on at least a
12 couple of occasions trying to resolve your differences on these
13 invoices and the indebtedness of Mr. Cook, correct?

14 A Well, that's correct. In addition we reviewed
15 invoices periodically throughout the whole cycle while we were
16 involved with the campaign. But specifically we also did
17 review on a couple of occasions at least two, and possibly
18 three, all of the invoices of the campaign.

19 Q And that was after --

20 A Up until that date when we met.

21 Q Well, what date was that?

22 A Well, I recall specifically meeting with Merrill the
23 first of October and reviewing all outstanding invoices and
24 then I remember meeting with him again in December and
25 reviewing all outstanding invoices.

1 Q Why don't you tell the jury about those.

2 A Well, I believe I discussed that the proposal for the
3 convention included specific items that would be covered by the
4 campaign. These would be items that the campaign would take
5 care of and provide to the convention. But because the
6 campaign was unable to do that, provide those items, R. T.
7 Nielson Company had to pick up the slack and that was again
8 above and beyond what we had planned to do.

9 So we had the right to charge some additional pricing
10 for those items. But in addition to that, Merrill and I had
11 discussed if there were certain things that we would be
12 purchasing that were out of the ordinary, that I was going to
13 make sure that he received some kind of a markup, a fair markup
14 for those types of services.

15 Q This would be like supplies for the convention?

16 A Yes. It could be supplies for the convention.

17 Q For special events?

18 A For special events, yes.

19 Q Would you look at Plaintiff's Exhibit 77, please.

20 Now, in that -- strike that. Give me just a second
21 so I can get my exhibit here. Let's talk about the first page
22 of Exhibit 77, Ron.

23 A Okay.

24 Q Did you discuss this particular invoice with
25 Mr. Cook?

Page 86

Page 88

1 A Yes, I did.
 2 Q On how many occasions? Just roughly. One or more
 3 times?
 4 A Are we talking about just this invoice or the
 5 division of the invoices? Are we just talking about this
 6 invoice?
 7 Q Let's talk about all three. When you say the
 8 division of the invoices, you're talking about the \$150, 000
 9 invoice that got supplied by a \$50,000 invoice and \$100,000
 10 invoice, correct?
 11 A Correct.
 12 Q Did you discuss those invoices with Mr. Cook?
 13 A Oh, yes.
 14 Q Several times?
 15 A I don't know if I could put a number on how many
 16 times we've discussed this invoice or --
 17 Q Or these invoices?
 18 A Or these series of invoices because amounts from
 19 these invoices are still left unpaid. That was the foundation
 20 of many of the discussions we had about outstanding bills. So
 21 these -- I wouldn't -- I would say more than 20 or 30 times.
 22 Q Okay. Well, let's discuss these in terms of the time
 23 when they were issued. Now, the \$150,000 invoice, that was
 24 issued July 29th, '96, correct?
 25 A Yes.

Page 87

1 Q And I believe you testified that the \$50,000 invoice,
 2 which I believe is 96199, which is Plaintiff's Exhibit 79, and
 3 Plaintiff's Exhibit 78, which is the \$100,000 invoice, those
 4 were issued a few days or a couple of weeks later; is that --
 5 do you recall that testimony?
 6 A Yes.
 7 Q Okay. Now, during this time frame, this July, August
 8 time frame, did you discuss these invoices with Mr. Cook?
 9 A Yes, I did.
 10 Q More than once?
 11 A Yes.
 12 Q Several times?
 13 A More than several. Many, many times.
 14 Q During any of these discussions did Mr. Cook ever
 15 object to these invoices?
 16 A No.
 17 Q Now, Exhibit 78, which is the \$100,000 invoice, and
 18 Exhibit 79, which is the \$50,000 invoice, both bear the date of
 19 July 29th, 1996, and yet they were issued several days or a
 20 couple of weeks later; correct?
 21 A That's correct.
 22 Q Why were they backdated?
 23 A Well, the original \$150,000 invoice was voided. So
 24 these two invoices took its place. So it was set up to reflect
 25 the same date as the original invoice.

1 Q Is that when -- from R.T. Nielson's standpoint,
 2 that's when the debt was incurred?
 3 A That's correct.
 4 Q Would you turn to Defendant's Exhibit 29, please.
 5 A Okay.
 6 Q Do you have that in front of you?
 7 A Yes, I do.
 8 Q Would you turn to the second page, 29-A, I guess it
 9 is. That's it. You were asked about this invoice, were you
 10 not, during Mr. DeLand's cross?
 11 A Yes, I was.
 12 Q And you were ready to explain why that invoice had
 13 been issued in January of 1997, but Mr. DeLand cut you off and
 14 so now I'm asking you why was that issued in January 1997?
 15 A Okay. Well, we reissued this invoice in January of
 16 1997 and it, I believe, reflects the same invoice number as the
 17 \$50,000 that's reflected -- described as the primary bonus, and
 18 so it has the same dollar amount. The reason that I had had
 19 the invoice printed is because the lawsuit had been filed and
 20 Merrill Cook was talking to the press. And during his
 21 conversations to the press he was accusing R. T. Nielson
 22 Company of charging him a primary bonus of \$50,000 which he had
 23 no understanding of why that was being invoiced that way.
 24 And frankly I was irked at what he was doing and so I
 25 asked Darlene, I said, Fine, he can call it whatever he wants,

Page 89

1 we all know what it is, it's \$150,000 for general consulting
 2 and staffing and polling services during the general election.
 3 If he wants to call it general consulting services for the
 4 general election, then that's what we'll call it. And I
 5 reissued the invoice and faxed it over to his office.
 6 Q Let's go up to your artistic work up there. Now,
 7 your testimony regarding the space that was dedicated to the
 8 Cook campaign in 1996 focused on, when Mr. DeLand's crossing
 9 you, focused on how you charged for post-election rent on these
 10 spaces. And I think you need to look at -- give me just a
 11 moment.
 12 MR. DeLAND: May we, your Honor, may we have the
 13 exhibit that he's referring to marked and admitted?
 14 MR. COBURN: I'm not going to have him write on it,
 15 but I guess we should have it admitted, yeah.
 16 THE COURT: I think we talked about taking a
 17 photograph of it. That's the only way we can do that.
 18 MR. DeLAND: It would be nice for the record to be
 19 able to refer to it by number at least.
 20 THE COURT: Why don't we just give it the next
 21 Defendant's number, which probably is 55. Is that the last
 22 one?
 23 MR. DeLAND: I think it is. We added one more, I
 24 believe, or two.
 25 THE COURT: Let me just indicate for the record then