

BEFORE THE FEDERAL ELECTION COMMISSION
OF THE UNITED STATES

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

MAR 8 5 02 PM '99

In the Matter of

CLINTON/GORE '92 COMMITTEE, et al.

MUR 4877

RESPONDENTS' RESPONSE TO TIME-BARRED COMPLAINT
ON ISSUES PREVIOUSLY DECIDED BY COMMISSION

Attempting to re-open the Federal Election Commission's 1994 final and conclusive resolution of its audit of the 1992 campaign, as well as the Commission's 1995 dismissal of MUR 4192 which raised the same allegations, complainants, Patricia and William Anderson, owners of Public Office Corporation ("POC"), repeat - at great length - previously known factual and legal contentions arising out of the 1992 audit. The Federal Election Commission ("Commission" or "FEC") has already investigated and rejected - on two separate occasions - these identical allegations. Simply put, the complaint in this matter is nothing more than a rehash - by a disgruntled vendor - of previously decided Commission actions.

Sifting through the myriad allegations in the complaint, it appears that POC's primary contention concerns repayment of public funds. Complainants allege that the Commission should have required the Clinton for President Committee ("CPC") to repay approximately \$3 million in federal matching funds.

Complainants argue that the FEC Commissioners on December 16, 1994 erred by failing to adopt the staff recommendation arising out of the CPC audit and erred again on September 18, 1995 in MUR 4192 in declining to approve the General Counsel's recommendation of reason to believe that a violation had occurred. The statement of reasons issued by the three Commissioners who voted against this recommendation is clear and unequivocal:

Based upon the Commission's regulations and prior Commission decisions, we concluded that the transfer was permissible under existing law and therefore voted against the General Counsel's recommendations We strongly believe that there was not a violation under the old rules. This question, in fact, was decided at the 'final and conclusive' audit determination.

Statement of Reasons (McGarry, Thomas and McDonald) (September 18, 1995) at 1, 10. This FEC dismissal in MUR 4192 was subsequently affirmed by the U.S. District Court for the District of Columbia and the Court of Appeals for the D.C. Circuit. Gottlieb v. Federal Election Comm'n, 143 F.3d 618 (D.C. Cir. 1998).

Other than their repetition of Commission-rejected legal positions taken by the FEC audit staff and the FEC General Counsel and their repetition of arguments presented to Judge Hogan who dismissed their libel suit in POC v. Clinton for President Committee, No. 95-1264 (D.D.C. dismissed Dec. 15, 1998), appeal pending, No. 99-7002 (D.C. Cir.), the Andersons have little new to add. They have now recast their libel allegations -- somehow a reference to an unnamed vendor in the Committee's response to an FEC audit report tainted the two earlier Commission results. Such an allegation is ludicrous. There is no causal or other relationship between the alleged libel and the two Commission resolutions. Nothing in any of the Commissioners' written statements of reasons refers to or is dependent upon the identity or actions of any vendor. Their decisions were based solely on matters of law and complainant's purported factual quibbles were immaterial to the Commissioners' explicit statements of reasons. Therefore, there is no reason for the Commission to revisit, much less change, its previous legal resolutions of this issue.

This complaint should be dismissed for the following reasons:

1) the FEC is barred from seeking any repayment from CPC by the three year statute of limitations imposed by the Federal Election Campaign Act ("FECA") of repayments at 26 U.S.C. §9038(c);

2) the FEC is barred from pursuing an enforcement action against CPC by the five year statute of limitations applicable to government proceedings for civil penalties at 28 U.S.C. §2462;

3) the complainants are estopped on the basis of *res judicata* and collateral estoppel from raising this issue as it has already been resolved in an audit and a previous MUR; and

4) none of the allegations in the complaint describes a violation of the FECA.

The instant complaint involves events that occurred at least five years ago and as many as seven years ago. During that time, CPC was represented by two different General Counsels, neither of whom is a party to this matter. This Response is based on the best documentation available after the passage of so many years and on the best recollection of individuals involved at the time.

FACTUAL BACKGROUND

POC was a vendor to the Clinton campaign during the 1992 primaries, initially performing services relating to CPC's threshold submission for matching funds, submitted to the FEC on November 15, 1991. After continuing to perform services under a proposal dated December 10, 1991, POC and CPC entered a written contract, effective on March 1, 1992. This contract incorporated by reference the December 10, 1991 proposal and specified that POC was to continue preparing matching fund submissions, and to continue to take "100% responsibility for FEC compliance reporting." Agreement, dated February 8, 1992 at section E. POC did not perform services for the general election phase of the campaign but continued to provide services related to the primaries until terminated in January 26, 1995.

Complainants' main assertion is that CPC received approximately \$3 million in matching funds for which the Commission should have required repayment. This allegation is based on contributions received by the campaign after President Clinton, then Governor of Arkansas, was selected by the Democratic Party as its nominee. During the post election audit of CPC, the Audit Division argued that these contributions were primary contributions and had to be applied to primary debts or obligations before the Committee could receive further matching funds. CPC, however, argued that Commission regulations in actuality required that these contributions be treated as general election contributions.

Under 11 C.F.R. §110.1(b)(2)(i), a contribution received after an election, is attributed to the next election, unless otherwise designated in writing. This regulation thus specifies that contributions received after a candidate, including a Presidential candidate, is nominated, are general election contributions.¹ The application of this regulation to the contributions in question meant that contributions received after President Clinton was nominated were general election (i.e., GELAC) contributions, unless designated otherwise in writing. President Clinton was nominated on July 15, 1992. In accordance with FEC regulations, CPC treated all contributions received after August 6, 1992 as GELAC contributions unless the contributor clearly designated them for the primary.

On the theory that approximately \$2.4 million in post nomination contributions should not have been transferred to the GELAC (i.e., should have been treated as primary funds), the Audit Division recommended that the Commission determine that CPC had received nearly that amount in public funds in excess of its entitlement, and that CPC be required to make a repayment. Report of the Audit Division on Clinton for President Committee, December 27, 1994 at 89. However, the Commission did not follow the auditors' recommendation and did not require such a repayment. Report of the Audit Division on Clinton for President Committee (December 27, 1994)(rejected by Federal Election Comm'n on December 15, 1994 by 3-3 vote.) Moreover, in a subsequent enforcement action, MUR 4192, the Commission failed to find reason to believe that CPC had violated the FECA or public financing laws by treating the post nomination contributions as GELAC funds. MUR 4192 (dismissed by Federal Election Comm'n on August 16, 1995) Thus, the Commission has dealt with this issue, not once, but twice, before the filing of the instant complaint.

¹ Presidential candidates who receive the full entitlement of public funding for the general election campaign are barred from accepting private contributions, except for contributions to a legal and accounting compliance fund (GELAC). 26 U.S.C. §9003(b)(2), 11 C.F.R. §9003.3(a).

LEGAL ANALYSIS

1. The FEC is barred from seeking any repayment from CPC by FECA provision imposing three year limitation on repayment demands.

The Presidential Primary Matching Payment Account Act prohibits the Commission from issuing a notification of repayment more than three years after the end of the matching payment period for the relevant election. 26 U.S.C. § 9038(c).² In the case of CPC, the end of the matching payment period occurred on the date of President Clinton's nomination at the Democratic National Convention on July 15, 1992. Hence, the time limitation for the Commission to demand a repayment from CPC expired on July 15, 1995. It is now 1999, more than six years after the end of the relevant matching payment period and more than three years after the date on which the Commission could have legally demanded a repayment. Hence, the Commission is barred by statute from seeking any repayment from CPC. Nothing in the complaint can overcome this statutory bar, and the complaint must be dismissed.

2. The FEC is barred from pursuing an enforcement action against CPC by the five year statute of limitations applicable to all government proceedings for civil penalties.

Although the FECA does not specify an explicit time limitation for FEC enforcement actions, the statute of limitations which generally covers government proceedings has been held to apply to the FEC. Under 28 U.S.C. § 2462, a proceeding for the enforcement of a civil penalty is barred unless commenced within five years from the date when the claim first accrued. The time limitations of Section 2462 apply to FEC actions for penalties under the FECA. FEC v. Williams, 104 F.3d 237, 239 (9th Cir. 1996); FEC v. National Right to Work Comm., Inc., 916 F. Supp. 10, 13 (D.D.C. 1996). Moreover, the limitations period runs from "the date of the

²Under court interpretations of this provision, an Interim Audit Report does not constitute notification that will satisfy statutory requirements. Dukakis v. Federal Election Comm'n, 53 F.3d 361 (D.C. Cir. 1995); Simon v. Federal Election Comm'n, 53 F.3d 356 (D.C. Cir. 1995). Only a notification issued after completion of all agency procedures and within three years of a candidates nomination will meet statutory requirements.

violation giving rise to the penalty." 3M v. Browner, 17 F.3d 1453, 1462-63 (D.C. Cir. 1994); National Right to Work Comm., Inc., 916 F. Supp. at 13.

The purported violations alleged in this complaint occurred in 1992.³ Clearly, the five year statute of limitations imposed by Section 2462 would bar the Commission from pursuing enforcement of any alleged violations in 1999. The complaint must thus be dismissed because any FEC enforcement is time barred.

3. Complainants are estopped on the basis of res judicata and collateral estoppel from raising this issue as it has already been decided in an audit and in a previous enforcement action.

In addition to resolving this issue in its post election audit of CPC, the Commission has also resolved it in the enforcement process by refusing to find reason to believe any violation of law from identical allegations of excessive payment of matching funds to CPC in Matter Under Review (MUR) 4192. CPC Audit, December 15, 1994 and MUR 4192, August 16, 1995. Therefore, complainants are estopped on the basis of res judicata and collateral estoppel from raising this issue as it has already been decided in an audit and a previous MUR. If the Commission were to entertain complaints in situations where it has already decided the very same issue with regard to the very same respondents, then complainants would simply pepper the Commission with the same allegations over and over again. Hence, the Commission must dismiss this complaint because the same issues have already been decided as to the same respondent in a previous audit and MUR.

4. None of the allegations in the complaint describes a violation of the FECA.
 - a. The FEC audit and enforcement process has determined that there was no receipt of matching funds in excess of entitlement.

As stated earlier, the main allegation in the complaint is that CPC received public funds in excess of its entitlement. However, the FEC audit and enforcement process has reached the opposite result by concluding that there was no receipt of matching funds in excess of

³ The allegations underlying this complaint concern redesignations which were made in 1992, or more than 6 years ago.

entitlement. In any event, the receipt of public funds in excess of entitlement is not a violation. Rather, the receipt of public funds in excess of entitlement is a matter strictly confined to the audit process. 26 U.S.C. §9038(b)(1). The Commission in its post election audit of CPC fully considered the issue of whether the Committee received public funds in excess of its entitlement as a result of its treatment of post-Convention contributions. The Commission did not require any repayment based on those contributions. That was simply the end of the matter as the enforcement process is not available where the alleged audited conduct is not found to be a violation of the statute. 2 U.S.C. §437g(a)(1).

b. POC had a history of failures in performing services for CPC

As former vendors to CPC, complainants' allegations stem not from any violation of law by respondents,⁴ but rather from their animosity toward the campaign, as a disappointed vendor that was not rehired for the 1992 general election campaign nor the 1996 campaigns. As explained above, POC provided services to CPC during the primary phase of the campaign. That contract was not renewed for the general election phase of the campaign when the work that POC performed as a vendor was brought in-house.

POC's performance was marked by many failures to render adequately the services required by its written agreements with CPC. POC had a contractual obligation to manage all aspects of CPC contributions, including submitting them for matching, obtaining any necessary contributor affidavits, and reporting them on FEC disclosure reports. POC had in the words of its agreement with CPC "100% responsibility for FEC compliance reporting," including generating the reports and timely filing them. Proposal, December 10, 1991, at 1-2. POC's errors, and the ensuing efforts to correct them, led to many problems for CPC.

⁴ The allegations against Ms. Utrecht are particularly specious. Ms. Utrecht was never General Counsel of the 1992 campaign. Rather, her law firm was retained in January, 1993, to represent the 1992 campaign in its post election audits, and it was in this capacity that Ms. Utrecht provided services to CPC. Indeed, in August 1992, at the time of the alleged "scheme" involving redesignations, she was in the hospital giving birth to her first child. Thus, she did not participate in the redesignation decisions in August through September 1992. As the attorney subsequently handling audit issues, she defended the Committee's actions, on an after-the-fact basis. Complaint, Tab 2 at 97.

There was a major accuracy problem with Committee disclosure reports produced by POC. The significant inaccuracies and numerous errors in the reports were such that they could not be reconciled with CPC's banking records. CPC hired an accounting firm to reconstruct accounting records and then on July 2, 1993 filed a complete set of accurate amended reports for each reporting period in 1992. (See Attachment 1, a spreadsheet showing discrepancies between POC's original reports and the amended reports.) FEC auditors accepted the amended reports as materially correcting misstatements in the previous reports and no further action regarding the deficient reports was taken. Report of the Audit Division on Clinton for President Committee, December 27, 1994 at 6.

The significance of POC's errors can be found in the initially reported cash balance figures. In their final Audit Report, FEC auditors noted that CPC's reported ending cash balance at December 31, 1992 was understated by over \$200,000. Report of the Audit Division on Clinton for President Committee, December 27, 1994 at 5. However, that was not POC's only cash balance error for that year. The October, 1992 report showed a cash balance that was understated by nearly \$400,000, the May and June, 1992 reports showed cash balances which were understated by more than \$300,000 and the November, 1992 report understated the cash balance by more than \$200,000.⁵

In addition to the errors in cash balances, POC also overstated disbursements by almost \$350,000 on the May, 1992 disclosure report and by over \$188,000 on the October, 1992, disclosure report, while understating disbursements by approximately \$200,000 on the July, 1992 disclosure report. An additional reporting error occurred on the December 31, 1991 report. POC incorrectly included payments to the Worthen National Bank for withholding taxes in the category of "other disbursements" on line 29 of the report. However, this payment should have been reported as an "operating expenditure" on line 23. This error resulted in understating the committee's operating expenditures by \$55,000.

⁵ The references are to monthly disclosure reports filed on the 20th of each month during 1992.

None of the reports filed in 1992 reported the correct amount for receipts and six of them had errors in the \$14,000 to \$28,000 range. Given the extent of POC's management over CPC contributions, it is surprising that receipts were never reported correctly by POC.

In an attempt to avoid responsibility for these failures, Pat Anderson seeks to diminish POC errors. In a July 9, 1993 memo to Bill Anderson, she admits to the \$200,000 error in the ending cash balance for 1992, terming it an "oversight," or a "typographical error." Complaint, Tab. 13 at 13011-13012. Similar assertions were made concerning the reporting error regarding payments to Worthen Bank. However, the errors discussed above were neither isolated nor minor oversights, but instead amounted to a serious failure by POC to perform its contractual obligations. CPC was not aware of the extent of these errors until after the primary phase of the campaign was completed. When CPC took steps to correct erroneous reports, POC was not fully cooperative about correcting its errors, so that CPC could produce amended reports.⁶

POC also incorrectly instructed contributors redesignating excessive primary contributions to GELAC to back date their redesignations. The result was that some redesignations bore a date which was months before GELAC was even opened. CPC was forced to refund all excessive contributions not properly or timely dated. In an October 6, 1992 memo to CPC staff member Patty Reilly, Pat Anderson apologizes for this error and admits that POC should have sought professional counsel on this issue. Complaint, Tab 13 at 13009-13010. Under its contract, POC had a clear obligation to process properly CPC contributions. By directing contributors to back date their redesignations, POC once again did not adequately perform its contract obligations, resulting in refunds and a financial loss to the Committee.⁷ Given POC's poor performance, it is disingenuous for the Andersons to claim that CPC libeled them or that CPC received matching funds in excess of their entitlement.

⁶ See Attachment 2 pertaining to documentation in the form of internal CPC memoranda concerning POC's lack of cooperation. These memoranda demonstrate the fact that POC's reporting errors and subsequent lack of cooperation were a source of frustration to CPC.

⁷ See letter from CPC General Counsel Christine Varney to Pat Anderson informing her that POC's error resulted in the Committee having to refund all excessive contributions not properly or timely redesignated. Complaint, Tab 24 at 24041.

c. CPC did not make "false statements" in its Audit Response.

Complainants first "false statement" accusation alleges that CPC in its Audit Response stated that POC obtained redesignations of post primary contributions to the Clinton/Gore GELAC. Complaint, Overview at 10. However, the Audit Response stated only that a "vendor" processed the redesignations. Response of Clinton for President Committee to the Interim Report of the Audit Division, July 6, 1994 at 40. The Audit Response never mentions POC as the vendor in charge of redesignations. Indeed, complainants themselves state that the redesignations were processed by a vendor, Schuh Advertising, thus demonstrating that the Audit Response was correct. Complaint, Overview at 7. In fact, POC's own complaint includes a document showing that POC provided Schuh Advertising with the list of contributors who were to receive redesignations, thereby indicating that POC may have made, or was involved in, the initial determination to treat these contributions as primary rather than general election contributions. Complaint, Tab 4 at 4004.

More importantly, the identity of the entity that processed the redesignations was not a material fact in the CPC audit. Who processed the redesignations was inconsequential. The determinative issues were the date on which the contributions were received and whether the contributions were designated in writing. The application of 11 C.F.R. §110.1(b)(2)(I) meant that contributions received after the date of President Clinton's nomination were general election contributions, unless designated otherwise in writing. Which group, business or individual actually processed the redesignations was not a material fact and of no consequence whatsoever.

Complainants' second principal "false statement" accusation is similarly misstated. Citing a reference in CPC's Audit Response to an incentive clause in the contract of an unnamed vendor, complainants contend that the incentive clause in their contract is different. Complaint, Overview at 7. But, as with "false statement" one, above, the "vendor" is not identified as POC, nor was the language of the contract with any vendor a material fact in the Commission's resolution of CPC's audit.

Complainants' third principal "false statement" accusation is that CPC on the basis of "analysis of the post-convention contributions," claimed that those contributions were not primary contributions. Complaint, Overview at 8.⁸ However, disputing a legal conclusion is not a false statement at all, but rather a disagreement over legal interpretation. Complainants assert that when CPC determined that the post convention contributions should have been treated as general election contributions, it devised a strategy to cover up the fact that its analysis of those contributions had changed. Complaint, Overview at 6. Nothing could be further from the truth. Indeed, CPC candidly stated in its Audit Response that "Since receipt of the Interim Report, staff have reviewed each contribution received after the date of ineligibility...." Response of Clinton for President Committee to the Interim Report of the Audit Division at 39. Thus, CPC made it quite clear that it was going back and recasting its earlier treatment of these contributions. Contrary to complainants' assertion, there was nothing surreptitious about this.

In summary, the CPC error that occurred involved the initial designation of the post convention contributions as primary, rather than general election, contributions. Who handled the mechanics of the redesignation did not matter. CPC's principal argument to the Commission and its auditors was not about who handled the redesignations, but that the post primary contributions were initially incorrectly treated as primary contributions and therefore unnecessarily redesignated because from the date the contributions were made, they were general election contributions as a matter of law under Commission regulations at 11 C.F.R. § 110.1(b)(2)(i).

d. CPC neither withheld information from Commission auditors nor presented false information to them

Complainants repeatedly accuse CPC of withholding information from, or submitting false information to, the Commission. These conclusory and reckless accusations are not true. Moreover, since POC was not hired to represent CPC in the audit, complainants have no first

⁸ The complaint, Overview at 10 combines statements one and two into "the first major false statement" and statement three becomes "the second major false statement." However counted, none is a false statement; none is material.

hand knowledge of what documents were produced during the audit process. Their sole involvement was to produce tapes from their computerized data for the auditors to use during the audit.

Complainants assert that FEC auditors never saw the redesignations, i.e., CPC documentation on post convention contributions, as well as statements submitted by contributors authorizing redesignation to GELAC. This assertion is completely false. All redesignations were provided to the auditors. Indeed, CPC has logs showing that documents concerning redesignated contributions were provided to the auditors. These logs specify the date that redesignations documents were given to the FEC and the time of their return. Complainants have simply fabricated this assertion out of thin air. The auditors obviously saw the redesignation information, and hence were able to comment in the Final Audit Report on who the payees were on the those contribution checks. Report of the Audit Division on Clinton for President Committee, December 27, 1994 at 83. In the Final Audit Report, the auditors explicitly state that they saw the redesignations:

Based on our review of contributions deposited, it appears that the Committee obtained redesignation letters and subsequently transferred the majority of the contributions to the Compliance Committee.

Report of the Audit Division on Clinton for President Committee, December 27, 1994 at 79.

Complainants assert that CPC did not divulge to FEC auditors or on its NOCO the existence of its "suspense account" into which post primary contributions were deposited. Complaint, Overview at 3, Tab 2 at 3. In fact, CPC's August 31, 1992 NOCO included the suspense account balance of \$416,205. in the "cash in bank" line of that NOCO. Moreover, CPC provided auditors with all bank records on this account and the suspense account is specifically discussed in the final Audit Report. Report of the Audit Division on Clinton for President Committee, December 27, 1994 at 79.⁹

⁹ The complaint cites to an excerpt from the General Counsel's report in MUR 4192 stating that CPC's NOCO presented an inaccurate picture of the campaign's financial status because it did not apply all private contributions to primary debt. Complaint, Tab 2 at 4. This statement is wrong, because it is predicated on the auditors' position that CPC post-convention contributions could not be treated as general election funds. The

The complaint asserts that CPC withheld from the Commission work papers and bank reconciliations relating to the original disclosure reports filed with the Commission. As explained above, the original disclosure reports prepared and filed by POC were found by the auditors to contain material misstatements. Substantial amendments were required, as well as the correction of accounting information to reflect reconciliations between the bank documentation and reports. This process involved collecting and reconciling copies of CPC bank records to reconstruct Committee disclosure reports from its inception forward. Since the auditors knew that CPC was in the process of preparing amended reports for the entire campaign, during the fieldwork stage of the audit, the auditors agreed to audit the amended reports and corresponding workpapers without attempting to audit the original reports, which turned out to be erroneous. Thus, while it is correct that CPC did not provide the workpapers backing up the original reports, the reason was that this documentation was incorrect. Auditing the incorrect workpapers would have been useless once amendments had been filed. The implication in the complaint that the original workpapers were hidden or surreptitiously withheld by CPC is simply wrong. To the contrary, the workpapers were totally redone so as to be accurate and correspond with the corrected reports. In short, CPC provided to the auditors everything given to the Committee by POC that was requested by the auditors and relevant to the audit.

The complainants assert that CPC submitted inaccurate NOCO statements which did not disclose post primary contributions being designated to GELAC. In fact, a NOCO discloses only a Committee's asset position (including cash), obligations and anticipated winding down costs. A NOCO is not intended to disclose contributions, except to the extent that cash from those contributions still remains in Committee accounts as of the date of the NOCO. As stated earlier,

Commission clearly did not adopt the auditors' position and therefore did not require CPC to make a repayment based on its treatment of post convention contributions as general election funds. Hence, the General Counsel's statement was not in accordance with the Commission's disposition of the CPC audit, and, therefore, it was wrong. Moreover, the Commission in MUR 4192 did not approve the General Counsel's recommendation, thus giving the statement in the report no effect. In any event, CPC's post primary contributions, to the extent that they still remained in CPC accounts, were included in the Committee's total assets listed on the NOCO. The total amount of these contributions was also included on the NOCO as an obligation to GELAC. CPC's obligations were then subtracted from its total assets to reach its deficit figure.

the NOCO submitted to the FEC on August 31, 1992, disclosed all accounts in which CPC held assets, including the suspense account. (See Attachment 3 which consists CPC NOCO filed as of August 31, 1992.) To find disclosure of all committee contributions received, one must examine a committee's disclosure reports, not its NOCO. As POC should well know, all contributions were disclosed monthly on CPC's reports at Schedule A. The post primary contributions were reported on CPC's Schedule A, filed on the 20th of each month after the primary (e.g., on August 20, 1992, September 20, 1992, etc.)¹⁰ Thus, the FEC auditors had complete disclosure of all post primary contributions to CPC. In fact, POC prepared the tapes which included that information and was used during the audit process.

Moreover, a Committee's NOCO statement is constantly in flux as a committee's assets and liabilities change, and as the Commission revises it. After the post primary audit, a Committee's NOCO is always revised as of the date of the candidate's ineligibility to comply with Commission findings. This revision can occur as much as three years after the election. In the case of CPC, its original treatment of post primary contributions as general election assets turned out to be correct at the final audit stage because the Commission did not determine those contributions to be primary contributions.

Complainants assert that CPC inflated winding down cost estimate to obtain more matching funds. This is a ridiculous assertion and FEC auditors did not make such a finding. In fact, CPC has actually spent more than its earlier estimates on winding down costs. Complaint, Tab 2 at 3.

Complainants assert that CPC did not did not disclose the services rendered to CPC by W. P. Malone. This assertion is completely wrong. These services were described fully in CPC's audit response and CPC provided documentation concerning payments to that vendor. Response of Clinton for President Committee to the Interim Report of the Audit Division at 17.

¹⁰ Any contributions erroneously disclosed on original completed by POC were later corrected in amended reports filed on July 2, 1993.

- e. Counsel's 1995 instructions to terminated vendor POC to return all Committee documents and tapes to the Committee occurred after the completion of the FEC audit process and were entirely proper.

Following conclusion of the FEC audit, it was entirely appropriate in January 1995 for counsel to the Committee, upon the termination of this particular vendor, to demand the return of confidential information belonging to the Committee that was in the possession of the now terminated vendor. Complaint, Tab 2 at 33. This instruction occurred after POC had transferred all data pertaining to the campaign from its computer files to CPC. POC computer files contained the list of Clinton campaign contributors. It was the campaign's responsibility to maintain sole control over that list to ensure that POC did not share it with other entities or campaigns, a situation which might result in a potential illegal contribution by CPC. Therefore, important that duplicate information in the possession of POC be returned or destroyed.

Section 396 of the Restatement (Second) of Agency emphasizes that after the termination of the agency, the agent has a duty to the principal not to use or to disclose to third persons confidential matters given to that agent only for that agent's performance of duties for the principal. Indeed, it is now routine for vendor contracts to provide for the return or destruction of copies of such documents at the conclusion of the engagement. Such a request is neither unusual, unprecedented, nor illegal. Indeed, the only illegality in the Andersons' complaint is their admitted retention - wrongfully - of copies of documents and computer tapes belonging to the Committee.

CONCLUSION

This complaint by a disgruntled former 1992 vendor and disappointed 1995-98 litigant is frivolous. Disagreeing with the legal arguments of campaign attorneys, the Andersons mischaracterize these legal arguments as a "conspiracy to defraud" and any statement with which they disagree as a "false statement." However, stripped of its rhetoric, this complaint has no

substance, recycles arguments twice rejected by the Commission, and seeks relief barred by the three- and five-year statutes of limitations. It should be summarily dismissed.

Respectfully submitted,

By: Patricia Ann Fiori
Patricia Ann Fiori, Esq.
Post Office Box 8
Charles Town, WV 25414

By: John C. Keeney, Jr.
John C. Keeney, Jr.
Hogan & Hartson, L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004

Attorneys for Respondents

CLINTON FOR PRESIDENT (92)
Comparison of Expenditures on Original Reports to Final Amended Reports

Orig	Date	Amnd Date	Total Receipts		(Increase) Decr	Total Disbursements		(Increase) Decr	Cash Balances		(Increase) decr
			Original	Amended		Original	Amended		Original	Amended	
9/30/91	7/2/93	7/2/93	201,319.50	201,653.53	(334.03)	58,794.13	56,743.36	2,050.77	142,525.37	144,910.17	(2,384.80)
12/31/91	7/2/93	7/2/93	3,096,086.34	3,102,367.88	(6,281.54)	1,355,297.16	1,357,848.22	(2,551.06)	1,885,609.30	1,889,429.83	(3,730.53)
1/92	7/2/93	7/2/93	2,193,510.06	2,199,276.19	(5,766.13)	2,675,783.47	2,677,744.20	(1,960.73)	1,403,425.11	1,410,961.82	(7,536.71)
2/92	7/2/93	7/2/93	3,447,941.90	3,436,781.04	11,160.86	4,752,299.32	4,738,164.63	14,134.69	102,068.47	109,578.23	(7,509.76)
3/92	7/2/93	7/2/93	4,917,825.87	4,888,926.38	28,899.49	5,395,314.24	5,423,084.81	(27,770.57)	(375,419.90)	(424,580.20)	49,160.30
4/92	7/2/93	7/2/93	5,089,132.52	5,065,591.09	23,541.43	4,455,497.16	4,403,302.72	52,194.44	258,215.46	237,708.17	20,507.29
5/92	7/2/93	7/2/93	5,191,993.57	5,177,757.24	14,236.33	5,288,355.75	4,939,830.60	348,525.15	161,853.28	475,634.81	(313,781.53)
6/92	7/2/93	7/2/93	4,716,814.31	4,697,838.38	18,975.93	4,149,796.73	4,136,026.67	11,770.06	728,870.86	1,035,446.52	(306,575.66)
7/92	7/2/93	7/2/93	5,771,375.12	5,752,842.57	18,532.55	5,555,207.61	5,762,464.39	(207,256.78)	945,038.37	1,025,824.70	(80,786.33)
8/92 (am 9/20/92)	7/2/93	7/2/93	4,456,583.03	4,440,833.44	15,749.59	4,764,554.19	4,693,130.59	71,423.60	637,067.21	773,527.55	(136,460.34)
9/92	7/2/93	7/2/93	2,369,725.81	2,368,740.13	985.68	1,325,570.91	1,252,410.61	73,160.30	1,681,222.11	1,889,857.07	(208,634.96)
10/92	7/2/93	7/2/93	3,335,962.59	3,335,037.43	925.16	2,176,161.72	1,987,691.10	188,470.62	2,841,022.98	3,237,203.40	(396,180.42)
11/92	7/2/93	7/2/93	205,633.23	205,293.23	340.00	285,648.11	284,345.06	1,303.05	2,946,221.76	3,158,151.57	(211,929.81)
12/92	7/2/93	7/2/93	88,677.85	86,526.20	2,151.65	305,431.97	302,558.02	2,873.95	2,729,467.64	2,942,119.75	(212,652.11)
3/93 (am 7/2/93)	7/2/93	7/2/93	211,340.85	211,340.85	0.00	1,232,817.20	1,232,817.20	0.00	1,920,643.40	1,920,643.40	0.00
6/93			47,827.85	47,827.85	0.00	282,198.59	282,198.59	0.00	1,686,272.66	1,686,272.66	0.00

The above was prepared from copies of reports currently available in Committee files.

MEMORANDUM - December 31, 1992

TO: Barbara Yates

FROM: Ellen Johnson

SUBJECT: Status of FEC Amendment work

Since December 16, there has been no significant progress correcting the primary disbursements on the POC database.

Pat Anderson was basically unavailable from December 17 thru the 27, and when we began working again Tuesday, December 29, we found that many of the changes and corrections we had given her weeks before were still not in her system. Pat seems completely disorganized on this identification and correction process, I believe in part because she has delegated much of the work to Yeung. The meticulous attention our database needs is just not available at POC under these conditions.

My suggestion is this: send Deana to POC on Monday, armed with our reconciled bank statements, voids, and outstanding checks. This demand for uninterrupted work time with Pat should produce results within 48 hours, and Keeley and Patty could begin the amendment process by Wednesday, confident that the disbursements database was completely correct.

I have no confidence whatsoever that Pat's disbursement tape will be completely accurate if produced under the current haphazard conditions.

MEMORANDUM-January 4, 1993

TO: Barbara Yates

FROM: Ellen Johnson

SUBJECT: FEC Report Amendments

To complete the accounting work on the FEC report disbursements, I need the following:

For every checking account, I need a listing of disbursements sorted and totaled by month written (drafts by month cleared). This will include the New York, Blytheville and Jonesboro accounts, as well as all Little Rock accounts. I have previously received corrected printouts on payroll only.

For each account, I need a printout of miscellaneous debits, credits and transfers. The previous printout has had corrections and a revised version is needed immediately.

Once again, after conversations both Deanna and I have had with Pat last week, I have no confidence that all of our previous identifications, corrections and changes have been accomplished by POC.

M E M O R A N D U M

TO: Barbara Yates
FROM: Deanna Higgins
DATE: January 14, 1993

RE: POC/Pat Anderson

I wanted to inform you of the problems we continue to have with Pat in getting the reports we need to file the amended FEC reports. I have talked with her several times this week regarding items we still need and items that still need to be corrected in the POC system. I requested printouts on the media account on Monday of this week. Pat told me she would fax them to me as soon as she had them in the format I was needing. As of today I still have not received these printouts.

Pat called me Wednesday afternoon in regards to a tape she was running for the amended returns. She could not get her numbers to reconcile to our numbers. I explained to her that we knew there would be timing differences and we are prepared to reconcile these differences as soon as we get the reports we are needing. Ellen and I explained to her today that if she will just send us the reports and let us work with the numbers, we will send her our reconciliations proving the differences between the numbers. She has not been cooperative in doing what we ask of her. If she would just trust us and send us the reports in the format we have requested we could get the reports filed in a timely manner.

MEMORANDUM - January 14, 1993

TO: Barbara Yates
FROM: Ellen Johnson

Deanna and I have spent most of the morning dealing with Pat. In the process of running the disbursement tapes and third quarter 1991 report, she encountered the timing differences which Deanna and I had previously identified and reconciled on our workpapers. We've spent most of the morning on conference call with Keeley and Patty trying to explain that those timing differences are not errors, and are meaningless to them in terms of the total disbursements.

Also, attached is a memo to Pat which is another request to produce the printouts we need for the final file copy, complete with the last few changes we identified. (Pat insisted that we could just pencil in the changes rather than reprint--I insisted on a final copy showing the changes in the computer.) We've been asking for this all week, as you know.

The final plan, which we've all agreed on, is this: Pat will ship us tonight everything we've asked for in this memo. We will then sit down with Keeley and Patty and go over our workpapers reconciling the timing differences. We will then take Pat's version of cash on hand and reconcile her cash to our cash, taking into account these timing differences.

Pat ran the disbursements tape yesterday, even though we hadn't seen her final corrections. When I asked Patty for a hard copy of what Pat reported so that we could check it one more time before it was filed, she told me that there wasn't time--it would be filed yesterday whether it was correct or not.

And so it goes.

MEMORANDUM - January 14, 1993

TO: Pat Anderson
FROM: Ellen Johnson
Deanna Higgins

To recap our conversation, these are the documents you will be sending tonight:

1. All checks, printed by date issued, in the following accounts:
 - Operating
 - Payroll
 - Media
 - New York
 - Jonesboro
 - Blytheville
 - Suspense
2. All transfers between these accounts
3. All wire transfers
4. All nsf debits and/or credits
5. All miscellaneous debits (bank charges, etc.)
6. In-Kind contributions
7. Your cash grids, by month

In return, we will supply you, Keeley and Patty with reconciliations proving both your cash balances and total disbursements, month by month.

I'm confident that the reconciliations we will show Keeley and Patty tomorrow afternoon will answer any questions you have.

CLINTON FOR PRESIDENT
STATEMENT OF NET OUTSTANDING CAMPAIGN OBLIGATIONS
AS OF 8/31/92

ASSETS

Cash on Hand		0 ¹	
Cash in Bank		508,720 ²	
Accounts receivable:			
Estimated Matching funds due 9/3	1,788,615		
Press & secret service receivables	116,802 ³		
Estimated Deposits	<u>135,568⁴</u>		
		2,038,985	
Capital assets		0 ⁵	
Other assets		0	
Amounts due from Joint Fundraising		0	
 TOTAL ASSETS		2,547,705	2,547,705

OBLIGATIONS

Accounts payable for Qualified Campaign Expenses:		3,350,548 ⁶	
		(3,350,548)	
Estimated Wind Down Cost 7/16/92-7/16/95 (projected termination date) ⁷			
 FEC Reports & Match Fees	642,000 ⁸		
Salaries and Benefits	449,624 ⁹		
Storage	1,800		
Rent	31,800		
Supplies & Overhead	48,000		
Legal & Accounting Fees	<u>882,400¹⁰</u>		
		(2,055,624)	
 TOTAL OBLIGATIONS		(5,406,172)	(5,406,172)
 NOCO-Deficit			(2,858,467)

1. Cash on Hand - no petty cash maintained.
2. This figure reflects the Committee's bank balances as of August 31, 1992.
3. The Committee has discovered additional press and secret service receivables, and has discounted certain press debts as uncollectable.
4. Deposits have been reduced by \$85,513. This amount reflects a return of some deposits and transfers of other outstanding deposits to general election accounts.
5. The Committee has liquidated all capital assets.
6. Accounts payable include a listing of the Committee's accounts payable in the system, known outstanding payables not yet in the system, and estimated contingent liabilities.
7. The Committee no longer believes fundraising fees will be required for its wind down efforts.
8. The Committee has re-estimated this category, adding \$197,590, and paying 97,590 during this period.
9. The Committee has determined that its salaries costs will be \$158,000 than originally estimated. Additionally, the Committee expended \$93,376 this period.
10. The Committee has determined that its legal and accounting fees were underestimated by \$100,000. Additionally the Committee paid \$17,600 in fees this period.