

MAY 17 2004

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BEFORE THE FEDERAL ELECTION COMMISSION

2004 MAY 17 A 9:55

SENSITIVE

In the Matter of)
)
Mary Robert) MUR 5321
Janet Robert)
Minnesotans for Janet Robert)
Rob LaFrentz, as treasurer)

GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED: Enter into preprobable cause conciliation with Mary Robert, Janet Robert, and Minnesotans for Janet Robert and Rob LaFrentz, as treasurer ("respondents").¹

II. BACKGROUND

This matter involves whether an \$800,000 monetary gift the Candidate's mother (Mary Robert) made to the Candidate (Janet Robert) during candidacy was an excessive contribution or became the Candidate's "personal funds," which would not be subject to the contribution limits. See 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.10. On March 4, 2004, the Commission found reason to believe that: Mary Robert violated 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3); Janet Robert violated 2 U.S.C. § 441a(f), and, Janet Robert for Congress and Teresa Silha, as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b). The Commission also authorized the use of compulsory process if the respondents did not cooperate with our informal request for information.

The notification letters invited the respondents to provide additional information concerning family gifts made prior to candidacy, the circumstances surrounding the \$800,000

¹ Since the Commission's reason to believe findings, Janet Robert has submitted an amended Statement of Organization indicating that the committee has been renamed Minnesotans for Janet Robert and that the new treasurer is Rob LaFrentz. A new designation of counsel form has been submitted for these respondents.

1 gifts, and sources of funds for the loans the Candidate made to her campaign. In response,
2 counsel for the Candidate's mother and counsel for the Candidate and her committee submitted a
3 joint letter requesting an extension to respond formally
4 to the Commission's findings until after a meeting to discuss further the matter. Attachment 1.
5 We granted the extension and subsequently met with both counsel. Counsel also provided: a
6 chart of the Robert family gift history; an affidavit from the Candidate; bank statements from the
7 Candidate's mother showing the source of funds for the \$800,000 gifts; financial documents
8 from the Candidate relating to the sources of funds for loans to her campaign; and notes from the
9 Candidate's mother that were attached to each of the \$800,000 checks. Attachment 2. We
10 separately obtained a copy of the Candidate's financial disclosure report that the Candidate filed
11 in 2002 with the Clerk of the U.S. House of Representatives. Attachment 3.

12 As further discussed below, based on the information gathered thus far, we conclude that
13 the \$800,000 gift was an excessive contribution from the Candidate's mother to the Candidate.
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17 **III. ANALYSIS**
18

19 The respondents had argued that the \$800,000 gift constituted "personal funds" of the
20 Candidate because such a gift was customarily given in years prior to candidacy, the gift was
21 made for personal and estate planning reasons, and the Candidate and her siblings received equal
22 \$800,000 gifts. The Candidate had also argued that she would have had sufficient liquid assets
23 without her mother's monetary gift to make the loans to her campaign.

1 As further discussed below, the information available establishes that the \$800,000 gift
2 was not "personal funds" of the Candidate under 11 C.F.R. § 110.10(b)(2), but was a
3 contribution under the Act, subject to the limitations of 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3).²
4 Specifically, the \$800,000 gift does not fit the pattern of gifts previously made, the personal and
5 estate planning reasons do not, by themselves, qualify a gift as "personal funds" under the
6 regulations, the circumstances surrounding the gift indicate that the gift was connected to
7 candidacy, and the Candidate would not have had sufficient liquid assets to make the loans to her
8 campaign.

9 First, the chart listing the Robert family gifts, covering the years 1968 through 2004, does
10 not support respondents' assertions that the \$800,000 monetary gift fit the pattern of gifts made
11 before candidacy. Attachment 1, pp. 1-4. The chart reflects annual gifts to the children that were
12 made primarily in December-March, with the majority of gifts in the \$5,000-\$20,000 range, and
13 largely in the form of Siegel-Robert, Inc. stock rather than in cash. *Id.* The Candidate's mother
14 made some gifts of shares valued at over \$100,000, but only in March and October 1997 and in
15 May 2000 did the Candidate's mother make gifts to the children of shares valued at a comparable
16 or larger amount than the \$800,000 gift. By contrast, the \$800,000 gifts in late August-
17 September 2002 represent the first time that the Robert children received a monetary gift of such

² A candidate for federal office may make unlimited expenditures and loans from personal funds. 11 C.F.R. § 110.10. The Commission's regulations define personal funds as including: salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established prior to candidacy; income from trusts established by bequest after candidacy of which the candidate is the beneficiary; gifts of a personal nature customarily received prior to candidacy; and proceeds from lotteries and similar legal games of chance. 11 C.F.R. § 110.10(b)(2). Each of these circumstances eliminates any link between the transfers and the candidacy. The Commission's regulations thereby strike a balance between barring any transfers of funds from family members exceeding the contribution limits and permitting a narrowly defined group of circumstances which, by objective means, demonstrates that the transfers were unconnected to the candidacy.

1 size; the largest monetary gift received up to that point had been only \$23,952.³ In short, while
2 the \$800,000 gift came in a form, timing, and amount that could immediately assist the
3 Candidate's campaign, it differed materially from the record of gifts "which had been
4 customarily received prior to candidacy." 11 C.F.R. § 110.10(b)(2).

5 Second, the respondents' personal and estate planning reasons for making the gift do not
6 transform the gift into "personal funds." The Candidate's mother has argued that the \$800,000
7 gifts were part of a pattern of estate planning, explaining that by 2002, she had already given or
8 sold most of the Siegel-Robert, Inc. stock to her children and now held liquid assets in excess of
9 \$40 million and received an annual income of See First General Counsel's Report
10 ("FGCR"), dated February 27, 2004. The Candidate's mother argued that she decided to make
11 the equal \$800,000 gifts because of her age, assets, the applicable gift and estate tax rules, and
12 her wish that her children receive substantial portions of her estate while she was still alive. *Id.*
13 Financial documents show that the Candidate's mother liquidated bonds to raise the funds for the
14 \$800,000 gifts. Attachment 2, pp. 26-28. According to counsel, the Candidate's mother sold the
15 bonds to finance the gifts and routinely sells and purchases bonds to generate income and as part
16 of her estate planning. While personal and estate planning reasons and transfers of equal value
17 might have been relevant if the evidence also had shown that the gift was consistent with a
18 pattern of gift giving before candidacy, such factors do not by themselves qualify the gift as
19 "personal funds" under the regulations. See FGCR, pp. 9-10. The statute and regulations could
20 be effectively circumvented if family members could justify gifts made after candidacy solely on
21 the basis of personal or estate planning considerations. *Id.* at 10.

³ The Candidate's mother made several large monetary gifts to each of her children after she made the \$800,000 gifts. Such gifts cannot demonstrate "gifts of a personal nature which had been customarily received prior to candidacy." 11 C.F.R. § 110.10(b)(2).

1 Third, the circumstances surrounding the making of the \$800,000 gift indicate that it was
2 connected to candidacy. In her affidavit, the Candidate acknowledges, and her bank statements
3 show, that she used the proceeds from the \$800,000 gift to make loans to her campaign, but the
4 Candidate avers that the \$800,000 gift was unanticipated and that she had no knowledge she
5 would receive the gift until a day or two before. Attachment 2, pp. 8-9. The Candidate also
6 avers that she decided to use the \$800,000 for her campaign after several weeks of pressure from
7 her campaign advisers to use the gift and after she was told that it would be "the minimum
8 needed to have a realistic chance of being successful."⁴ *Id.* at 8. While this explanation raises
9 questions, *see* footnote 4, the available information nonetheless establishes a direct link between
10 the \$800,000 gift and the use of the gift for an urgent need, i.e., media buys during a critical time
11 in the campaign.

12 Fourth, the available information also shows that the Candidate did not have sufficient
13 available liquid assets to make the loans to her campaign and that the \$800,000 gift spared her
14 from having to use other, more time-consuming and costly means, to raise the funds. Bank
15 statements submitted by the Candidate show that she deposited the \$800,000 gift on August 30,
16 2002; the check cleared on September 3, 2002. Shortly thereafter, the Candidate withdrew funds
17 for campaign loans on September 18, 2002 (\$306,000) and on September 24, 2002 (\$500,000),
18 (*Id.* at 24-25), and the campaign made two media disbursements on the same dates in the same
19 amounts. Without her mother's \$800,000 gift, the Candidate's bank balance before she made the

⁴ The Candidate's explanation about the circumstances surrounding her receipt and use of the \$800,000 gift raises more questions than supports respondents' arguments that the gift was unconnected to candidacy. First, the Candidate's mother has not specifically explained, beyond citing to general estate planning reasons, why she decided to make the gift in late August-September, during the middle of the Candidate's campaign rather than at the usual time, December-March. In addition, the Candidate has not explained why she made a special request to her mother's bookkeeper to have the check sent to her (the other children's checks were dated and sent several days after the Candidate's check).

1 two loans would have been approximately \$180,000. Thus, it appears that the Candidate,
2 without her mother's gift, would not have had cash to make the loans that paid for the media
3 buys. Although the Candidate avers that she had sufficient assets in the form of her remaining
4 150,000 shares of Siegel-Robert, Inc. stock to redeem or to use as security for additional bank
5 loans, she has acknowledged that her mother's monetary gift enabled her to make the campaign
6 loans so that she did not have to resort to other means, i.e., borrowing against or redeeming the
7 shares.⁵ *Id.* at 9.

8 Based on the information provided by counsel, we conclude that the \$800,000 monetary
9 gift does not fit any of the categories of "personal funds" set forth in the regulation, and does not
10 provide objective evidence similar to the circumstances in the regulation that the gift was
11 unconnected to the Candidate's campaign. *See* 11 C.F.R. § 110.10(b)(2). In addition, the
12 information provided shows that the Candidate used the proceeds from the \$800,000 monetary
13 gift to make two loans to her campaign and that she would not have had sufficient liquid assets,
14 without the gift, to make these loans.

15 Counsel for the Candidate's mother has informed this Office that the Candidate's mother
16 sought legal advice before making the \$800,000 monetary gifts and was advised that the gift

⁵ Financial documents provided by the Candidate show that on May 15, 2002, the Candidate owned 214,422 shares of Siegel-Robert, Inc. stock valued at \$17.17 per share and retained 150,000 shares of unencumbered stock, after she used 64,075 of those shares as security for the \$750,000 bank loan she obtained to make the first loan to her campaign. Attachment 2, pp. 10-17.

Regarding the procedures for redeeming Siegel-Robert, Inc. shares, the Vice-President, Treasurer, of Siegel-Robert, Inc., has stated in a letter that it has been the company's practice "to accommodate" shareholders who wish to liquidate company stock though the company has not been legally required to do so. Attachment 2, p. 20. In conversations with this Office, counsel has indicated that to have the company shares redeemed, another family member would have to agree to purchase those shares. Along those lines, counsel indicated that the Candidate had asked two of her sisters in April 2002 whether they would be willing to redeem her shares if she needed it, that the sisters had agreed to do so but that the Candidate had not asked them again. Counsel has also said that he was informed that the paperwork to process either a bank loan or to redeem the shares would have taken 72 hours. Counsel, however, has not provided documentation to substantiate those assertions nor has counsel explained how long it would take for the funds to be made available.

1 would not be considered a contribution to the Candidate if each child received the same amount
2 and the gift was made for estate planning reasons. Although reliance on the advice of counsel
3 might negate the *mens rea* required for finding that a violation was knowing and willful, this
4 Office is not recommending that the Commission make any such findings. Accordingly, while
5 the reliance on the advice of counsel might appropriately be considered as a mitigating factor
6 during conciliation, it is not legally relevant to liability. *See FEC v. Friends of Jane Harman*,
7 59 F. Supp. 2d 1046 (C.D. Cal. 1999) (reliance on the advice of counsel is evidence of good faith
8 belief that conduct was not illegal and relevant to determining the amount of a civil penalty, but
9 does not absolve the respondents of liability for the violation).

10 **IV. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY**

11
12 To expedite the resolution of this matter, this Office recommends that the Commission
13 approve preprobable cause conciliation with these respondents.

V. **RECOMMENDATIONS**

1. Enter into conciliation with Mary Robert, Janet Robert, Minnesotans for Janet Robert, and Rob LaFrentz, as treasurer, prior to a finding of probable cause to believe.
2. Authorize an appropriate conciliation agreement and approve the appropriate letters.

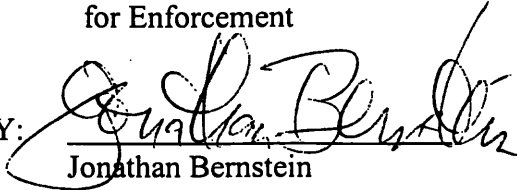
Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

5/14/2004

Date

BY:


Jonathan Bernstein
Assistant General Counsel


Dominique Dillenseger
Attorney

Attachments

1. Letter from counsel, dated April 1, 2004
2. Responses/Documents to Informal Discovery
3. Candidate Financial Disclosure Statement

**Janet
Robert**
For Congress

FAX

P.O. Box 624
Stillwater, MN 55082
651-735-7876 Fax 651-730-4288
jrobert@janetrobertforcongress.com

August 8, 2002

The Clerk
U.S. House of Representatives
Legislative Resource Center
B106 Cannon House Office Building
Washington, DC 20515-6612
Fax #: (202) 225-0146 or (202) 226-5207

LEGISLATIVE RESOURCE CENTER
2002 AUG -9 AM 9:56
OFFICE OF THE CLERK
U.S. HOUSE OF REPRESENTATIVES

Following is my Financial Disclosure Statement which is due August 9, 2002. I have also Fed Ex'ed the Statement scheduled to arrive August 9, 2002 to your attention. If you have any questions concerning this manner please contact me at (651) 735-7876.

Sincerely,


Janet Robert

ATTACHMENT 3

Page 1 of 7

**UNITED STATES HOUSE OF REPRESENTATIVES
FINANCIAL DISCLOSURE STATEMENT**

Period Covered: January 1, 2001 - Aug 9, 2002

Tanet Robert

Po Box 604

Stillwater, MN 55082

☒ Candidate for the House of Representatives
☐ New officer or employee

State: MN
District: 6

Date of Election: 11-5-02

Check if Amendment ☐

FORM B

For use by candidates and new employees

(Full Name)

(Mailing Address)

Daytime Telephone:

651-735-7876

LEGISLATIVE RESOURCE CENTER

2002 AUG -9 AM 9:56

OFFICE OF THE CLERK
U.S. HOUSE OF REPRESENTATIVES

FAX
(Office Use Only)

A \$200 penalty shall be assessed against anybody who files more than 30 days late.

In all sections, please type or print clearly in black ink.

PRELIMINARY INFORMATION — ANSWER EACH OF THESE QUESTIONS

I. Did you or your spouse have "earned" income (e.g., salaries or fees) of \$200 or more from any source in the reporting period? If yes, complete and attach Schedule I.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	IV. Did you hold any reportable positions on or before the date of filing in the current calendar year or in the prior two years? If yes, complete and attach Schedule IV.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
II. Did you, your spouse, or a dependent child receive "unearned" income of more than \$200 in the reporting period or hold any reportable asset worth more than \$1,000 at the end of the period? If yes, complete and attach Schedule II.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	V. Did you have any reportable agreement or arrangement with an outside entity? If yes, complete and attach Schedule V.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
III. Did you, your spouse, or a dependent child have any reportable liability (more than \$10,000) during the reporting period? If yes, complete and attach Schedule III.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	VI. Did you receive compensation of more than \$5,000 from a single source in the two prior years? If yes, complete and attach Schedule VI.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

Each question in this part must be answered and the appropriate schedule attached for each "Yes" response.

EXCLUSION OF SPOUSE, DEPENDENT, OR TRUST INFORMATION — ANSWER EACH OF THESE QUESTIONS

TRUSTS —Details regarding "Qualified Blind Trusts" approved by the Committee on Standards of Official Conduct and certain other "excepted trusts" need not be disclosed. Have you excluded from this report details of such a trust benefiting you, your spouse, or a dependent child? (See Instructions, pages 10-11.)	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
EXEMPTION —Have you excluded from this report any other assets, "unearned" income, transactions, or liabilities of a spouse or dependent child because they meet all three tests for exemption?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

CERTIFICATION — THIS DOCUMENT MUST BE SIGNED BY THE REPORTING INDIVIDUAL AND DATED

This Financial Disclosure Statement is required by the Ethics in Government Act of 1978, as amended. The Statement will be available to any requesting person upon written application and will be reviewed by the Committee on Standards of Official Conduct or its designee. Any individual who knowingly and willfully falsifies, or who knowingly and willfully fails to file this report may be subject to civil penalties and criminal sanctions (See 5 U.S.C. app. 4, § 104 and 18 U.S.C. § 1001).

Certification

I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.

Signature of Reporting Individual

Tanet Robert

Date (Month, Day, Year)

8-7-02

SCHEDULE I—EARNED INCOME (INCLUDING HONORARIA)

Name	Janet Robert	Page 2 of 6
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List the source, type, and amount of earned income, including honoraria, from any source (other than your current employment by the U.S. Government) totalling \$200 or more during the current year to the filing date and, separately, the preceding calendar year. For a spouse, list the source and amount of any honoraria; list only the source for other spouse earned income exceeding \$1,000.

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SCHEDULE II — ASSETS AND "UNEARNED" INCOME

 Name Janet Robert

 Page 3 of 6

BLOCK A

Asset and/or Income Source

Identify (a) each asset held for investment or production of income with a fair market value exceeding \$1,000 at the end of the reporting period, and (b) any other asset or source of income which generated more than \$200 in "unearned" income during the year. For rental property or land, provide an address. Provide full names of any mutual funds. For a self-directed IRA, i.e., one where you have the power to select the specific investments, provide information on each asset in the account that exceeds the reporting threshold, and the income earned for the account. For an IRA or retirement plan that is not self-directed, name the institution holding the account and provide its value at the end of the reporting period. For an active business that is not publicly traded, in Block A state the nature of the business and its geographic location. For additional information, see the instruction booklet for the reporting year.

Exclude: Your personal residence (unless there is rental income); any debt owed to you by your spouse, or by you or your spouse's child, parent, or sibling; any deposits totaling \$5,000 or less in personal savings accounts; any financial interests in or income derived from U.S. Government retirement programs.

If you so choose, you may indicate that an asset or income source is that of your spouse (SP) or dependent child (DC) or is jointly held (JT), in the optional column on the far left.

BLOCK B

Value of Asset

at close of reporting period. If you use a valuation method other than fair market value, please specify the method used. If an asset was sold and is included only because it generated income, the value should be "None."

BLOCK C

Type of Income

A	None
B	\$1 - \$1,000
C	\$1,001 - \$15,000
D	\$15,001 - \$50,000
E	\$50,001 - \$100,000
F	\$100,001 - \$250,000
G	\$250,001 - \$500,000
H	\$500,001 - \$1,000,000
I	\$1,000,001 - \$5,000,000
J	\$5,000,001 - \$25,000,000
K	\$25,000,001 - \$50,000,000
L	Over \$50,000,000
	DIVIDENDS
	RENT
	INTEREST
	CAPITAL GAINS
	EXCEPTED TRUST
	QUALIFIED BEND TRUST
	Other Type of Income (Specify: For Example, Partnership Income or Farm Income)

BLOCK D

Amount of Income

For retirement plans or accounts that do not allow you to choose specific investments, you may write "NA" for income. For all other assets, indicate the category of income by checking the appropriate box below. Dividends, even if reinvested, should be listed as income.

Current Year

Preceding Year

I	None	I	None
II	\$1 - \$200	II	\$1 - \$200
III	\$201 - \$1,000	III	\$201 - \$1,000
IV	\$1,001 - \$2,500	IV	\$1,001 - \$2,500
V	\$2,501 - \$5,000	V	\$2,501 - \$5,000
VI	\$5,001 - \$15,000	VI	\$5,001 - \$15,000
VII	\$15,001 - \$50,000	VII	\$15,001 - \$50,000
VIII	\$50,001 - \$100,000	VIII	\$50,001 - \$100,000
IX	\$100,001 - \$1,000,000	IX	\$100,001 - \$1,000,000
X	\$1,000,001 - \$5,000,000	X	\$1,000,001 - \$5,000,000
XI	Over \$5,000,000	XI	Over \$5,000,000

SP, DC, JT	SP, DC, JT	Asset and/or Income Source	A	B	C	D	E	F	G	H	I	J	K	L	DIVIDENDS	RENT	INTEREST	CAPITAL GAINS	EXCEPTED TRUST	QUALIFIED BEND TRUST	Other Type of Income (Specify: For Example, Partnership Income or Farm Income)	Current Year	Preceding Year
		SP Mega Corp. Stock																					
		DC, Examples: Simon & Schuster																					
		JT First Bank of Pennsylvania (TV accounts)																					
		Siegel - Robert, Inc., St. Louis																					
		MD, Manufacturing of																					
		auto, computer, mechanical																					
		and industrial valves																					
		Lake Etno Boat																					
		Lake Elmo, MO																					
		First American																					
		Prime Oblig. FIA																					
		Citygroup Inc																					
		Ell Lilly + Co.																					

For additional assets and unearned income, use next page.

ATTACHMENT 3

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SCHEDULE II — ASSETS AND “UNEARNED” INCOME

Continuation Sheet (if needed)

Name Janet Robert

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ATTACHMENT
6
Page

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For additional assets and unearned income, use next page.

SCHEDULE III — LIABILITIES

Name Janet Robert

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Report liabilities of over \$10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent child. Mark the highest amount owed during the reporting period. Exclude: Any mortgage on your personal residence (unless there is rental income); loans secured by automobiles, household furniture, or appliances; and liabilities owed to a spouse, or the child, parent, or sibling of you or your spouse. Report revolving charge accounts only if the balance at the close of the previous calendar year exceeded \$10,000.

SP, DC, JT	Creditor	Type of Liability	Amount of Liability										
			B	C	D	E	F	G	H	I	J	K	L
	Example: First Bank of Wilmington, Delaware	Mortgage on 123 Main Street, Dover, Del.	\$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	\$1,000,001 - \$2,500,000	\$2,500,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	\$50,000,001 - \$100,000,000
	Bruce G. Robert QTIP Marital Trust St. Louis, Mo.	Promissory note to QTIP Trust for purchase of Siegel-Robert Inc. stock from QTIP Trust				X			X				

SCHEDULE IV — POSITIONS

Report all positions, compensated or uncompensated, held on or before the date of filing during the current calendar year and in the two prior years as an officer, director, trustee of an organization, partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. Exclude: Positions held in any religious, social, fraternal, or political entities; positions solely of an honorary nature; and positions listed on Schedule I.

Position	Name of Organization
Director	Siegel-Robert, Inc. - 2000 and 2001; resigned end of 2001

Use additional sheets if more space is required.