



FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

THIS IS THE BEGINNING OF MUR # 3216

DATE FILMED 8/27/93 CAMERA NO. 4

CAMERAMAN EES

93040953610

The Kerry Committee

06C9896
RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

91 JAN 22 PM 4:14

MUR 3216

91 JAN 23 AM 10:53

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

January 14, 1991

Chairman Lee Ann Elliott
Federal Election Commission
999 East Street, NW
Washington, DC 20463

Dear Madame Chairman:

This complaint calls for an immediate investigation into an apparent violation of the reporting requirements of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. Sec. 434(b) and related regulations of the Commission (11 C.F.R. Sec. 104.5) by the Rappaport for Senate Committee (Seven Strathmore Road, Natick, MA) and the candidate it supports, Mr. James W. Rappaport.

Specifically, the Rappaport Committee has, by its own admission, failed to comply with the 48-hour reporting requirements crafted to assure full disclosure to the public of the financial activities of a campaign in the days immediately before an election.

The evidence shows that on the following dates, Mr. Rappaport loaned his campaign funds totaling in the aggregate of \$250,000.

<u>Reported Date</u>	<u>Amount of Loan</u>
August 30, 1990	\$200,000
September 10, 1990	\$ 50,000

These loans were made within 20 days of the primary election date in Massachusetts on which Mr. Rappaport competed for his party's nomination for the United States Senate. Under the law, they were required to have been reported within 48 hours of the date these loans were made. In fact, they were not reported until the last full quarterly report filed before the November general election on October 15, 1990.

These violations are not disputed by the Rappaport campaign. In an article in The Boston Herald on October 23, 1990, Rappaport campaign spokesman, Richard Gaines, is quoted as admitting the failure to report but contending that it was "just a bookkeeping imperfection."

In addition, the Rappaport campaign violated the 48-hour rule again in connection with the following contribution by Mr. Rappaport less than 21 days before the general election.

Reported Date

Amount of Loan

October 18, 1990

\$500,000

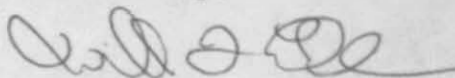
Under the 48-hour rule, this \$500,000 contribution should have been reported by the close of business October 20, 1990. In fact, this loan was not reported until October 23, 1990, the date that The Boston Herald article appeared.

It is, therefore, without question, that the law was violated and that full remedial action by the Commission is warranted without delay.

This is not a minor reporting lapse or anything resembling a "technical" violation. The loans involved here were substantial in character, fully \$750,000,000 in all. Moreover, the reporting requirement in question, the 48-hour requirement, occupies a special place in the scheme of reporting requirements. As the Commission has frequently stated, this requirement is meant to secure full, public awareness before an election of 11th hour financing.

Accordingly, vigorous action by the Commission to remedy the violation is critical to public confidence in the enforcement of our campaign finance laws.

Sincerely,



William L. Elsbree
Treasurer
Kerry for Senate in '90 Committee
20 Park Plaza, Suite 227
Boston, MA 02116
617-451-1990

Before me, the undersigned, a Notary Public in and for said County and State, on this day personally appeared William Elsbree known to me to be the person whose name is subscribed to the foregoing instrument signed and sworn to before me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF
OFFICE

this 15th day of January 1991
~~December 1990~~

Catherine F. Stauber
Notary Public in and for Suffolk
County, Massachusetts

CATHERINE F. STAUBER, NOTARY PUBLIC
MY COMMISSION EXPIRES, MAY 16, 1997

23040953612

GOP Senate hopeful reports loans late

By ALAN LEVIN

In an apparent violation of federal campaign finance law, Republican James W. Rappaport failed to properly disclose two loans totalling \$250,000 he made to his committee days before the Sept. 18 primary.

Rappaport made the loans Aug. 30 and Sept. 16 — during the period within 20 days of an election when candidates are required to notify officials within 48 hours of any donation of \$1,000 or over.

In addition, one donation of \$1,000 also was not reported

under the 48 hour rule, according to Rappaport's finance reports on file at the Secretary of State's office.

"The intent of the law is to give the voters and the people as much information as possible about a candidate's financial information before an election," said Federal Election Commission spokesman Fred Filand.

He would not comment on Rappaport specifically, but said the FEC considers loans to be contributions. The FEC may levy civil penalties up to the amount of the donation if it finds a campaign committee in

violation, he said.

Rappaport reported the loans and the \$1,000 individual contributor on his finance report dated Oct. 15. Rappaport has loaned his committee a total of \$225 million during the campaign.

Rappaport spokesman Richard Gaines said the reporting error was unintentional and the campaign had no intent of deceiving the public. He said the campaign gave reporters an accurate total of Rappaport's loans at the time.

"I don't know why they were reported in the later FEC report," he said. "It was nothing

intentional, just a bookkeeping imperfection."

Meanwhile, the 48 hour reports filed in recent days with the FEC show Rappaport is receiving a rush of donations from political action committees.

Rappaport, who said in a press conference last week that he ultimately would like to see PACs eliminated, accepted \$20,000 in PAC money last Thursday and Friday alone.

For the same period, he reported only \$8,000 in individual contributions of \$1,000 or over.

The conservative Rappa-

port, who often cites his experience in business as a real estate developer while campaigning, reaped the benefits from several business PAC's.

American Medical PAC gave \$5,000. The Machine Tool PAC donated \$1,000. Commodity Futures Political Fund contributed \$2,500.

He also received \$1,000 from Beef PAC, \$1,000 from Illinois Tool Works PAC, \$1,500 from Hook Supers, Inc. PAC, \$1,000 from Dow, Lohnes & Albertson PAC and \$1,000 from CIBM Ball PAC, Inc.



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 25, 1991

William L. Elsbree, Treasurer
Kerry for Senate in '90 Committee
20 Park Plaza, Suite 227
Boston, MA 02116

RE: MUR 3216

Dear Mr. Elsbree:

This letter acknowledges receipt on January 22, 1991, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by James W. Rappaport, Jim Rappaport for Senate and Vincent J. Santoro, as treasurer. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3216. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

If you have any questions, please contact Retha Dixon, Docket Chief, at (202) 376-3110.

Sincerely,

Lawrence M. Noble
General Counsel

A handwritten signature in dark ink, appearing to read "Lois G. Lerner", is written over the typed name.

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Procedures

93040953614



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 25, 1991

James W. Rappaport
7 Strathmore Road
Natick, MA 01760

RE: MUR 3216

Dear Mr. Rappaport:

The Federal Election Commission received a complaint which alleges that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3216. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

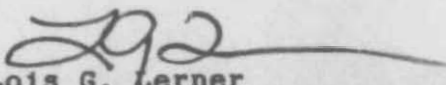
93040953615

If you have any questions, please contact Jeffrey Long, the staff member assigned to this matter at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble
General Counsel

BY:


Lois G. Lerner
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

930409533616



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 25, 1991

Vincent J. Santoro, Treasurer
Jim Rappaport for Senate
7 Strathmore Road
Natick, MA 01760

RE: MUR 3216

Dear Mr. Santoro:

The Federal Election Commission received a complaint which alleges that Jim Rappaport for Senate and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3216. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.


93040953617

If you have any questions, please contact Jeffrey Long, the staff member assigned to this matter at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble
General Counsel

BY:


Lois G. Lerner
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

93040953618

LAW OFFICES
WUNDER, RYAN, CANNON & THELEN

1615 L STREET, N.W., SUITE 650
WASHINGTON, D. C. 20036

(202) 659-3005
FACSIMILE: (202) 659-3010

OGC 0078
RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

91 FEB 14 AM 9:25

February 12, 1991

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
91 FEB 14 AM 10:02

Federal Election Commission
General Counsel's Office
999 E Street, N.W.
Washington, DC 20463

RE: MUR 3216
Jim Rappaport for Senate
Committee

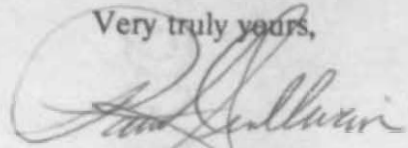
Attn: Mr. Long

Dear Mr. Long:

Please find enclosed the Statement of Designation in the above referenced matter.

Should you have any questions, please contact me at your convenience.

Very truly yours,



Paul E. Sullivan
Legal Counsel

cc: Vince Santoro, Treasurer
James Rappaport, Esq.

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 3216

NAME OF COUNSEL: Paul E. Sullivan

ADDRESS: Wunder, Ryan, Cannon & Thelen

1615 L Street, NW, Suite 650

Washington, DC 20036

TELEPHONE: 202/778-0884

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

2/12/91
Date

Signature

Henry Sauton Treas.

RESPONDENT'S NAME: Jim Rappaport

ADDRESS: Jim Rappaport for Senate

7 Strathmore Road

Natick, MA 01760

HOME PHONE: 617/

BUSINESS PHONE: 617/227-7345

93040953620

cc: Vince Santoro, Treasurer
James Rappaport
Chairman John McGarry
Vice Chairman Joan Aikens
Commissioner Lee Ann Elliott
Commissioner Tom Josefiak
Commissioner Danny L. McDonald
Commissioner Scott Thomas

BEFORE THE FEDERAL ELECTION COMMISSION

Rappaport for Senate
Committee and
Vincent Santoro, as
Treasurer

)
)
)
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)

MUR 3216
Reason to Believe
Response

I.
FACTUAL SUMMARY

Pursuant to 2 U.S.C. §437g(a)(1) the Jim Rappaport for Senate Committee and Vincent J. Santoro, as Treasurer, (hereinafter "Respondent") file this response with the Federal Election Commission (hereinafter "FEC" or "Commission") in answer to a complaint filed with the Commission by a letter dated January 14, 1991 filed by William L. Elsbree, Treasurer, Kerry for Senate in '90 Committee (hereinafter "Complaint").

The Complaint, received on January 31, 1991 alleges that the Respondent failed to timely report three separate loans made by the candidate to the Respondent's committee during the course of the 1990 primary and general elections.

The Complaint alleges that the aforementioned loans were not timely reported pursuant to 2 U.S.C. §434(a)(6), the so called "48 hours notification" provision. That section states as follows:

"(A) The principle campaign committee of a candidate shall notify the clerk, the secretary, or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of

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\$1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution.

(B) The notification required under this paragraph shall be in addition to all other reporting requirements under this Act."

The three loans in question are as follows:

1. August 30, 1990 loan made by James Rappaport to Respondent's committee:
\$200,000
2. September 10, 1990 loan made by James Rappaport to Respondent's committee: \$50,000
3. October 18, 1990 loan made by James Rappaport to Respondent's committee:
\$500,000

The Massachusetts primary was held September 18, 1990 and the general election, November 6, 1990.

The August 30 and September 10 loans were reported on the Respondent's October quarterly report, timely filed October 15, 1990. The October 18, 1990 loan was reported to

the Secretary of the Senate by a facsimile at 11:33 a.m. on October 23, 1990. A copy of the notification verifying receipt by the Secretary of the Senate is attached hereto as Exhibit "A".

Respondent received the primary election report notice, issued by the Federal Election Commission relative to the Massachusetts primary election. A copy of that notice is attached hereto as Exhibit "B". No such notice was received for the general election.

II. ARGUMENTS

It was Respondent's belief at the time that the reference to the "last minute contributions" provision contained in Exhibit "B" did not include loans which a committee received from the candidate. Respondent viewed the term "contributions" to reference funds which were received from individuals and PACs. The notice did not indicate that loans were to be included in this 48 hour notice requirement. Therefore, Respondent did not realize a duty to report within the 48 hour provision, loans made by the candidate since in Respondent's opinion, it was limited to contributions from third party sources. This was the first time the Treasurer served in such a capacity with a federal committee and he was unaware that the "48 hour" requirement applied to loans.

As noted above, the October 18 loan was reported on October 23rd. It should be noted that the 48 hour deadline for this contribution fell on a weekend; Saturday and Sunday were the 20th and 21st of October. Respondent believed that weekends were not included in the 48 hour notice thereby requiring that the notice be filed on the 22nd of October. Due to the rush of activities during the last weeks of the campaign, Respondent

filed the loan on October 23rd, 1990 along with an additional loan made that same date for \$500,000. (See Exhibit "A", Schedule C)

With regard to the October 18 loan, it should be noted that the Respondent's filing of the notice on October 23rd, complied with the spirit and the policy surrounding the 48 hour notice provision in the regulations. Notice of that loan was on the public record a full two weeks before the date of the election and therefore it provided the public and the Respondent's opponent, Senator Kerry, more than sufficient notice of the loan in question. The fact that the 48 hours actually fell during a weekend would not have provided the public nor Senator Kerry's committee with substantially greater notice since such notices would not have been available to the public or to press until Monday, the 22nd.

In addition, the loan in question on the 18th of October was not the first such loan made by the candidate to the Respondent. Clearly, as the Respondent's report indicates, the candidate had previously made substantial loans to the Committee and therefore the public was well aware of the fact that the candidate was substantially supporting the efforts of the campaign. Therefore, the immediacy of the notice under the provision is but a de minimus oversight by the Respondent as compared to the typical situation in which such contributions under the 48 hour notice are made by third party individuals or PACs. Here the mere fact that the loan was made by the candidate and that there had been a history of substantial loans by the candidate to the Respondent committee, greatly reduces the impact that such a reporting notice would have on the public.

III.
CONCLUSION

For these reasons, the Respondent submit that the alleged violations in the complaint are of a de minimus nature and hereby request the Commission to make a finding of reason to believe and take no further action and close out the file.

Respectfully submitted,

Paul E. Sullivan
Counsel for Respondents

230409536626

EXHIBIT "A"

93040953627

WALTER J. STEWART
SECRETARY

PAMELA S. GAVIN
SUPERINTENDENT

HART BUILDING
SUITE 232
WASHINGTON, DC 20510-7118
PHONE 202-224-0322

United States Senate

OFFICE OF THE SECRETARY

OFFICE OF PUBLIC RECORDS

ACKNOWLEDGMENT OF RECEIPT OF FACSIMILE 48 HOUR NOTIFICATION

Filed pursuant to the Federal Election Campaign Act, as amended

Jim Rappaport For Senate
7 Strathmore Road
Natick, Massachusetts 01760

Date Received: 10/23/90 Time Received: 11:33

FAX Transmission Cover Sheet

TO: Jim Rappaport For Senate

From: Senate Office of Public Records

Public Records Office FAX Number is 202/224-1851

93040953628



JIM RAPPAPORT FOR U.S. SENATE

FAX TRANSMISSION COVER

FAX #: 1-508-650-9584

TO: Office of the Secretary of the Senate

FIRM: _____

FAX NO: (202) 224-1851

NUMBER OF PAGES TO FOLLOW: 1

FROM: Jim Rappaport for Senate #C00238709

SUBJECT: ^{10/23/90} ~~Contributions~~ received of \$1,000
or more - See enclosed Schedule A

DATE: 10/23/90

TIME: 11:30 a.m.



Jim Rappaport for Senate, 7 Strathmore Road, Natick, MA 01760 Tel. (508) 650-9494

Paid for by Jim Rappaport for Senate

93040953629

Name of Committee (in Full) Jim Rappaport for Senate				#C00238709	
A. Full Name, Mailing Address and ZIP Code of Loan Source James W. Rappaport 761 Strawberry Hill Road Concord, MA 01742		Original Amount of Loan \$500,000.00	Cumulative Payment To Date	Balance Outstanding at Close of This Period \$500,000.00	
Election: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):					
Terms: Date Incurred <u>10/18/90</u> Date Due <u>12/31/90</u> Interest Rate <u>0</u> % (apr) <input type="checkbox"/> Secured					
List All Endorsers or Guarantors (if any) to Item A Personal Funds					
1. Full Name, Mailing Address and ZIP Code		Name of Employer			
		Occupation			
		Amount Guaranteed Outstanding: \$			
2. Full Name, Mailing Address and ZIP Code		Name of Employer			
		Occupation			
		Amount Guaranteed Outstanding: \$			
3. Full Name, Mailing Address and ZIP Code		Name of Employer			
		Occupation			
		Amount Guaranteed Outstanding: \$			
B. Full Name, Mailing Address and ZIP Code of Loan Source James W. Rappaport 761 Strawberry Hill Road Concord, MA 01742		Original Amount of Loan \$500,000.00	Cumulative Payment To Date	Balance Outstanding at Close of This Period \$500,000.00	
Election: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):					
Terms: Date Incurred <u>10/23/90</u> Date Due <u>12/31/90</u> Interest Rate <u>0</u> % (apr) <input type="checkbox"/> Secured					
List All Endorsers or Guarantors (if any) to Item B Personal Funds					
1. Full Name, Mailing Address and ZIP Code		Name of Employer			
		Occupation			
		Amount Guaranteed Outstanding: \$			
2. Full Name, Mailing Address and ZIP Code		Name of Employer			
		Occupation			
		Amount Guaranteed Outstanding: \$			
3. Full Name, Mailing Address and ZIP Code		Name of Employer			
		Occupation			
		Amount Guaranteed Outstanding: \$			
SUBTOTALS This Period This Page (optional)					
TOTALS This Period (last page in this line only)				\$1,000,000.00	
Carry outstanding balance only to LINE 3, Schedule D, for this line. If no Schedule D, carry forward to appropriate line of Summary.					

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EXHIBIT "B"

93040953631

1/primary
9/18

PRIMARY ELECTION REPORT NOTICE

FEDERAL ELECTION COMMISSION

MASSACHUSETTS

August 13, 1990

REPORT	REPORTING PERIOD1/	REG./CERT.	FILING DATE
		MAILING DATE2/	
PRE-PRIMARY	07/01/90 - 08/29/90	09/03/90	09/06/90
OCTOBER QUARTERLY	08/30/90 - 09/30/90	10/15/90	10/15/90

WHO MUST FILE

PRINCIPAL CAMPAIGN COMMITTEES OF CONGRESSIONAL "CANDIDATES" who seek nomination in the September 18, 1990, Massachusetts, Primary.

WHAT MUST BE REPORTED

All financial activity that occurred during the reporting period (or before, if not previously reported).

REPORTING FORMS

Candidate committees use Form 3 (enclosed). If the campaign has more than one authorized committee, the principal campaign committee must also file a consolidated report on Form 3Z.

WHERE TO FILE

Consult the instructions on the back of the Form 3 Summary Page. Note state filing requirements also.

LABEL

Committees should affix the peel-off label from the envelope to Line 1 of the report. Corrections should be made on the label.

LAST-MINUTE CONTRIBUTIONS

Committees must also file special notices on contributions of \$1,000 or more, received during the period August 30 through September 15, 1990. The notice must reach the appropriate federal and state offices within 48 hours of the committee's receipt.

1/The period begins with the close of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

2/The mailing date for the Primary report is a federal holiday, nevertheless, the report must be received by the filing date. Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

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91 APR 18 AM 11:16

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

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR #3216
DATE COMPLAINT RECEIVED
BY OGC: 1/22/91
DATE OF NOTIFICATION TO
RESPONDENTS: 1/25/91
STAFF MEMBER: Jeffrey Long

COMPLAINANT: William L. Elsbree, Treasurer
Kerry for Senate in '90 Committee

RESPONDENTS: James W. Rappaport
Jim Rappaport for Senate and
Vincent J. Santoro, as treasurer

RELEVANT STATUTE: 2 U.S.C. § 434(a)(6)

INTERNAL REPORTS CHECKED: Disclosure Records

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was generated by a complaint filed on January 22, 1991, by William L. Elsbree, the treasurer of the Kerry for Senate in '90 Committee. Attachment 1. James Rappaport lost the Massachusetts general election with 43% of the vote against Senator Kerry.

The complaint alleges that James Rappaport and Jim Rappaport for Senate and Vincent J. Santoro, as treasurer, (the "Committee") failed to file two 48 hour notifications ("48 Hour Notices") prior to the primary election for contributions totaling \$250,000, and failed to file one 48 Hour Notice prior to the general election for a \$500,000 contribution. Counsel for the Respondents filed a response on February 14, 1991, asking that the Commission find

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91 APR 18 AM 11:16

reason to believe and take no further action in the matter.
Attachment 2.

II. FACTUAL AND LEGAL ANALYSIS

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The Federal Election Campaign Act of 1971, as amended ("the Act"), requires principal campaign committees of candidates for federal office to notify in writing either the Secretary of the Senate, the Clerk of the U.S. House of Representatives or the Commission, as appropriate, and the Secretary of State, of each contribution totaling \$1,000 or more, received by any authorized committee of the candidate after the 20th day but more than 48 hours before any election. 2 U.S.C. § 434(a)(6)(A). The Act further requires notification to be made within 48 hours after the receipt of the contribution and to include the name of the candidate and office sought, the date of receipt, the amount of the contribution, and the identification of the contributor. Id. The notification of these contributions shall be in addition to all other reporting requirements. 2 U.S.C. § 434(a)(6)(B). According to 11 C.F.R. § 100.7(a)(1)(B), a loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid.

The Massachusetts primary election was held on September 18, 1990, and the general election on November 6, 1990. According to the complaint, Mr. Rappaport loaned to his campaign committee, Jim Rappaport for Senate, \$200,000 on August 30, 1990, and \$50,000 on September 10, 1990. Both of these contributions were made after the 20th day but more than 48 hours before the primary election election but the Complainant alleges the contributions were not

reported by the Committee until they appeared on the the Committee's 1990 October Quarterly Report. In addition, according to the complaint, Mr. Rappaport made a \$500,000 loan to his campaign committee on October 18, 1990, 19 days before the general election, but the Committee did not report the receipt of that contribution until October 23, 1990.

The Federal Election Commission Schedule C of the Committee's 1990 October Quarterly Report lists two loans from James W. Rappaport's personal funds; one loan of \$200,000 was made on August 30, 1990, and the second loan of \$50,000 was made on September 10, 1990. On the Committee's 1990 30 Day Post-General Report Schedule C, a \$500,000 loan is listed from James W. Rappaport's personal funds to his committee.

In their response, the Respondents do not dispute the dates the loans were made, their failure to file 48 hour notices for the August 30 and September 10 loans, or the lateness of the notification for the October 23 loan. Commission records confirm the failure of the Committee to file 48 hour notices for the August 30 and September 10 loans and the failure to timely file a 48 hour notice for the October 23 loan.

Respondents contend that their failure to report these contributions within the required forty-eight hours was due to their belief that the provision did not include loans which a committee received from the candidate. The Respondents also argue that because the public was already aware that the Committee was receiving loans from the candidate and because the contributions in question were on the public record a full two weeks prior to

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the date of the election, the alleged violations are therefore of a de minimus nature.

According to the Federal Election Campaign Act of 1971, as amended, ("the Act") and Commission past practices, loans received by a committee from the personal funds of the candidate constitute a contribution and are therefore subject to the reporting requirements of the Act, including the filing of 48 Hour Notices pursuant to 2 U.S.C. § 434(a)(6). This Office therefore recommends that the Commission find reason to believe Jim Rappaport for Senate and Vincent Santoro, as treasurer, violated 2 U.S.C. § 434(a)(6). Because of the amounts involved, we do not agree with counsel's request to take no further action.

The making of loans by candidates to their committees from their personal funds are considered contributions for reporting purposes but are not subject to the contribution limits. This Office recommends therefore that the Commission find no reason to believe that James W. Rappaport violated any provision of the Act based on the complaint in this matter, and approve the Factual and Legal Analysis and the appropriate letters.

III. RECOMMENDATIONS

1. Find reason to believe that Jim Rappaport for Senate and Vincent Santoro, as treasurer, violated 2 U.S.C. § 434(a)(6).
2. Find no reason to believe that James W. Rappaport violated any provision of the Federal Election Campaign Act of 1971, as amended, on the basis of the complaint filed in MUR 3216, and close the file as to this Respondent.

93040953636

3. Approve the attached Factual and Legal Analysis and the appropriate letters.

Lawrence M. Noble
General Counsel

Date 4/18/91

BY: 
Lois G. Lerner
Associate General Counsel

Attachments

1. Complaint
2. Response
3. Factual & Legal Analysis

93040953637

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
James W. Rappaport;) MUR 3216
Jim Rappaport for Senate)
and Vincent J. Santoro,)
as treasurer.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on April 22, 1991, the Commission, decided by a vote of 6-0 to take the following actions in MUR 3216:

1. Find Reason to believe that Jim Rappaport for Senate and Vincent Santoro, as treasurer, violated 2 U.S.C. § 434(a)(6).
2. Find no reason to believe that James W. Rappaport violated any provision of the Federal Election Campaign Act of 1971, as amended, on the basis of the complaint filed in MUR 3216, and close the file as to this Respondent.
3. Approve the Factual and Legal Analysis and the appropriate letters, as recommended in the General Counsel's Report dated April 18, 1991.

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

Attest:

4-23-91
Date

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

Received in the Secretariat: Thurs., April 18, 1991 11:16 a.m.
Circulated to the Commission: Thurs., April 18, 1991 4:00 p.m.
Deadline for vote: Mon., April 22, 1991 4:00 p.m.



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 3, 1991

Paul E. Sullivan, Esquire
Wunder, Ryan, Cannon & Thelen
1615 L Street, N.W.
Suite 650
Washington, D.C. 20036

RE: MUR 3216
Jim Rappaport for Senate and
Vincent Santoro, as
treasurer

Dear Mr. Sullivan:

On January 25, 1991, the Federal Election Commission notified your clients, Jim Rappaport for Senate and Vincent Santoro, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on April 22, 1991, found that there is reason to believe Jim Rappaport for Senate and Vincent Santoro, as treasurer, violated 2 U.S.C. § 434(a)(6), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.*

Under the Act, you have an opportunity to demonstrate that no action should be taken against your clients. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your clients, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the

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Paul E. Sullivan, Esquire
Page 2

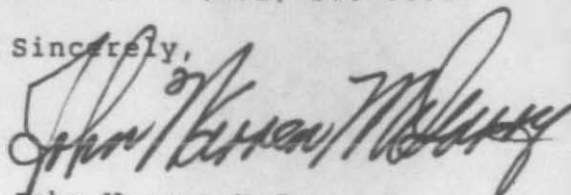
General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Jeffrey Long, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,



John Warren McGarry
Chairman

Enclosures
Factual & Legal Analysis

93040953640

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS:

MUR: 3216

Jim Rappaport for Senate and
Vincent J. Santoro, as treasurer

This matter was generated by a complaint filed by William L. Elsbree, treasurer of the Kerry for Senate in '90 Committee.

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires principal campaign committees of candidates for federal office to notify in writing either the Secretary of the Senate, the Clerk of the U.S. House of Representatives or the Commission, as appropriate, and the Secretary of State, of each contribution totaling \$1,000 or more, received by any authorized committee of the candidate after the 20th day but more than 48 hours before any election. 2 U.S.C. § 434(a)(6)(A). The Act further requires notification to be made within 48 hours after the receipt of the contribution and to include the name of the candidate and office sought, the date of receipt, the amount of the contribution, and the identification of the contributor. Id. The notification of these contributions shall be in addition to all other reporting requirements. 2 U.S.C. § 434(a)(6)(B). According to 11 C.F.R. § 100.7(a)(1)(B), a loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid.

The Massachusetts primary election was held on September 18, 1990, and the general election on November 6, 1990. Mr. Rappaport loaned to his campaign committee, Jim Rappaport for Senate,

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\$200,000 on August 30, 1990, and \$50,000 on September 10, 1990. Both of these contributions were made after the 20th day but more than 48 hours before the primary election election but the contributions were not reported by the Committee until they appeared on the the Committee's 1990 October Quarterly Report. In addition, Mr. Rappaport made a \$500,000 loan to his campaign committee on October 18, 1990, 19 days before the general election, but the Committee did not report the receipt of that contribution until October 23, 1990.

93040953642
The Federal Election Commission Schedule C of the Committee's 1990 October Quarterly Report lists two loans from James W. Rappaport's personal funds; one loan of \$200,000 was made on August 30, 1990, and the second loan was made on September 10, 1990. On the Committee's 1990 30 Day Post-General Report Schedule C, a \$500,000 loan is listed from James W. Rappaport's personal funds to his committee. Commission records confirm the failure of the Committee to file 48 hour notices for the August 30 and September 10 loans and the failure to timely file a 48 hour notice for the October 23 loan.

Respondents do not dispute the dates the loans were made, their failure to file 48 hour notices for the August 30 and September 10 loans, or the lateness of the notification for the October 23 loan. Therefore, there is reason to believe Jim Rappaport for Senate and Vincent J. Santoro, as treasurer, violated 2 U.S.C. § 434(a)(6).



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 3, 1991

Paul E. Sullivan, Esquire
Wunder, Ryan, Cannon & Thelen
1615 L Street, N.W.
Suite 650
Washington, D.C. 20036

RE: MUR 3216
James W. Rappaport

Dear Mr. Sullivan:

On January 25, 1991, the Federal Election Commission notified your clients, Jim Rappaport for Senate and Vincent Santoro, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

On April 22, 1991, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe James W. Rappaport violated any provision of the Act, on the basis of the complaint filed in MUR 3216. Accordingly, the Commission closed its file in this matter as it pertains to James W. Rappaport.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under

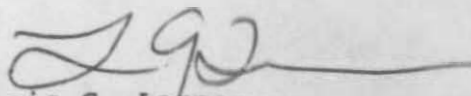
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Paul E. Sullivan, Esquire
Page 2

2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

Sincerely,

Lawrence M. Noble
General Counsel



BY: Lois G. Lerner
Associate General Counsel

93040953644

00C 1236

LAW OFFICES
WUNDER, RYAN, CANNON & THELEN

1615 L STREET, N.W., SUITE 650
WASHINGTON, D. C. 20036

(202) 659-3005
FACSIMILE: (202) 659-3010

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
91 MAY 22 AM 10:21

May 21, 1991

Lawrence Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

RE: MUR 3216 Jim Rappaport for Senate and
Vincent Santoro, as treasurer

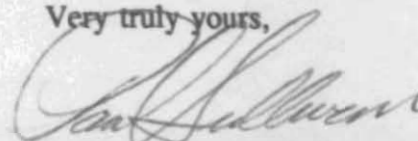
ATTENTION: Jeffrey Long

Dear Mr. Long:

As a follow up to our discussion last week of your May 3, 1991 letter to me regarding the above referenced matter, I have had initial discussions with my client regarding this matter. However, in order to meet with my client regarding this matter and to fully discuss his options and the format of a preprobable cause conciliation agreement, I would hereby request that the Commission provide a two week extension of time. It is anticipated that during that time period, I will be able to review the particulars with my client and to submit to the Commission the specific terms of an agreement which I believe will lead to an expedited conclusion of this matter.

Thank you for your time and attention to this matter.

Very truly yours,



Paul E. Sullivan

cc: Jim Rappaport

9304953645



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 5, 1991

Paul E. Sullivan, Esquire
Wunder, Ryan, Cannon & Thelen
1615 L Street, N.W.
Suite 650
Washington, D.C. 20036

RE: MUR 3216
Jim Rappaport for Senate and
Vincent Santoro, as treasurer

Dear Mr. Sullivan:

On May 3, 1991, you were notified that the Federal Election Commission found reason to believe your clients, Jim Rappaport for Senate and Vincent Santoro, as treasurer, violated 2 U.S.C. § 434(a)(6). Under the Federal Election Campaign Act of 1971, as amended, and Commission regulations, you have an opportunity to demonstrate that no further action should be taken against Jim Rappaport for Senate and Vincent Santoro, as treasurer, and to request pursuing pre-probable cause conciliation.

A review of our files indicates that you may not have received a response to your May 21, 1991, request for an extension of time, however, you have had sufficient time to respond. Please file a response as soon as possible to keep this matter from proceeding to the next stage of the enforcement process.

Should you have any questions, please contact Jeffrey Long, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

George F. Rishel
BY: George F. Rishel
Assistant General Counsel

93040953646

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F.E.C.
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BEFORE THE FEDERAL ELECTION COMMISSION

91 SEP 30 PM 2:27

In the Matter of

Jim Rappaport for Senate and
Vincent J. Santoro, as treasurer

)
) MUR 3216
)

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter was generated on January 22, 1991, by a complaint filed by William L. Elsbree wherein it was alleged that Jim Rappaport for Senate and Vincent J. Santoro, as treasurer (the "Committee" or "Respondents"), and James W. Rappaport failed to file two 48 Hour Notifications prior to the 1990 Massachusetts primary election. A response to the complaint was received on February 14, 1991, from Paul E. Sullivan representing both the Committee and the candidate in this matter. The Commission, on April 22, 1991, found reason to believe that the Committee violated 2 U.S.C. § 434(a)(6), and found no reason to believe and closed the file with regard to James Rappaport.

The Respondents were notified on May 3, 1991, of the Commission's findings and were asked to submit factual materials to demonstrate that no further action should be taken by the Commission and informed that they may request pre-probable conciliation. On May 21, Mr. Sullivan requested a two week extension of time to file a response. Due to an oversight, the Respondents were not notified that their request for an extension of time was granted. On September 5, 1991, this Office sent a letter which stated that although the Respondents may not have received a letter granting their extension of time, they have had

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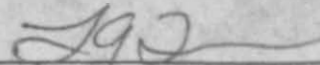
sufficient time to respond. The letter also informed the Respondents that if a response was not received within five days, the matter will proceed to the next stage of the enforcement process. To date the Commission has not received a response from the Respondents or Mr. Sullivan. Since June 18, staff from this Office have made seven attempts by telephone to contact counsel to determine if a response or request for pre-probable cause conciliation will be filed. Because the attempts to illicit a response have failed, this Office will proceed to the next stage of the enforcement process.

Lawrence M. Noble
General Counsel

Date

9/27/91

BY:


Lois G. Lerner
Associate General Counsel

Staff Assigned: Jeffrey Long

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RECEIVED
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SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION 91 OCT 25 AM 10:22

In the Matter of)
Jim Rappaport for Senate and) MUR 3216
Vincent J. Santoro, as treasurer)

SENSITIVE

GENERAL COUNSEL'S REPORT

The Office of the General Counsel is prepared to close the investigation in this matter as to Jim Rappaport for Senate and Vincent J. Santoro, as treasurer, based on the assessment of the information presently available.

Date

10-24-91

Lawrence M. Noble
General Counsel

Lawrence M. Noble (7/2)

93040953649



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 25, 1991

Paul E. Sullivan, Esquire
Wunder, Ryan, Cannon & Thelen
1615 L Street, N.W.
Suite 650
Washington, D.C. 20036

RE: MUR 3216
Jim Rappaport for Senate and
Vincent J. Santoro, as treasurer

Dear Mr. Sullivan:

Based on a complaint filed with the Federal Election Commission on January 22, 1991, and information supplied by you, the Commission, on April 22, 1991, found that there was reason to believe your clients, Jim Rappaport for Senate and Vincent J. Santoro, as treasurer, violated 2 U.S.C. § 434(a)(6), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

23040953650

Paul E. Sullivan, Esquire
Page 2

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Jeffrey Long, the staff member assigned to this matter, at (202) 219-3690.

Sincerely,

Lm Noble (712)
Lawrence M. Noble
General Counsel

Enclosure
Brief

93040953651

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Jim Rappaport for Senate and)
Vincent J. Santoro, as treasurer) MUR 3216
)

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

93040953652
This matter was generated by a complaint filed by William Elsbree, treasurer of the Kerry for Senate in '90 Committee. Mr. Elsbree states that Mr. Rappaport loaned to his campaign committee, Jim Rappaport for Senate ("the Committee"), \$200,000 on August 30, 1990, and \$50,000 on September 10, 1990. The Massachusetts primary election was held on September 18, 1990, and the general election on November 6, 1990. Both of these contributions were made after the 20th day but more than 48 hours before the primary election election but the contributions were not reported by the Committee until they appeared on the Committee's 1990 October Quarterly Report. In addition, Mr. Rappaport made a \$500,000 loan to his campaign committee on October 18, 1990, 19 days before the general election, but the Committee did not report the receipt of that contribution until October 23, 1990.

A response to the complaint was received on February 14, 1991, filed by Paul E. Sullivan representing both the Committee and the candidate in this matter. The Commission, on April 22, 1991, found reason to believe that the Committee violated 2 U.S.C. § 434(a)(6), and found no reason to believe and closed the file with respect to James Rappaport.

The Respondents were notified on May 3, 1991, of the Commission's findings and were asked to submit either factual materials to demonstrate that no further action should be taken by the Commission or a request for pre-probable conciliation. To date the Commission has not received a response from the Respondents.

II. ANALYSIS

93040953653
The Federal Election Campaign Act of 1971, as amended ("the Act"), requires principal campaign committees of candidates for federal office to notify in writing either the Secretary of the Senate, the Clerk of the U.S. House of Representatives or the Commission, as appropriate, and the Secretary of State, of each contribution totaling \$1,000 or more, received by any authorized committee of the candidate after the 20th day but more than 48 hours before any election. 2 U.S.C. § 434(a)(6)(A). The Act further requires notification to be made within 48 hours after the receipt of the contribution and to include the name of the candidate and office sought, the date of receipt, the amount of the contribution, and the identification of the contributor. Id. The notification of these contributions shall be in addition to all other reporting requirements. 2 U.S.C. § 434(a)(6)(B). According to 11 C.F.R. § 100.7(a)(1)(B), a loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid.

The Federal Election Commission Schedule C of the Committee's 1990 October Quarterly Report lists two loans from James Rappaport's personal funds; one loan of \$200,000 was made on

August 30, 1990, and the second loan was made on September 10, 1990. On the Committee's 1990 30 Day Post-General Report Schedule C, a \$500,000 loan is listed from James W. Rappaport's personal funds to his committee. Commission records confirm the failure of the Committee to file 48 Hour Notices for the August 30 and September 10 loans and the failure to timely file a 48 Hour Notice for the October 18 loan.

Respondents contend that their failure to report these contributions within the required forty-eight hours was due to their belief that the provision did not include loans which a committee received from the candidate. The Respondents also argue that because the public was already aware that the Committee was receiving loans from the candidate and because the contributions in question were on the public record a full two weeks prior to the date of the election, the alleged violations are therefore of a de minimus nature.

In their response to the complaint the Respondents do not dispute the dates the loans were made, their failure to file 48 Hour Notices for the August 30 and September 10 loans, or the lateness of the notification for the October 18 loan. Therefore, there is probable cause to believe Jim Rappaport for Senate and Vincent J. Santoro, as treasurer, violated 2 U.S.C. § 434(a)(6).

III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that Jim Rappaport for Senate
and Vincent J. Santoro, as treasurer, violated 2 U.S.C.
§ 434(a)(6).

Date

11-24-91

Lawrence M. Noble
General Counsel

Lawrence M. Noble (LH2)

Staff person: Jeffrey Long

93040953655



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 2, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Paul E. Sullivan, Esquire
Wunder, Ryan, Cannon & Thelen
1615 L Street, N.W.
Suite 650
Washington, D.C. 20036

RE: MUR 3216
Jim Rappaport for Senate and
Vincent J. Santoro, as treasurer

Dear Mr. Sullivan:

On October 25, 1990, you were mailed a brief stating the position of the General Counsel on the legal and factual issues in this matter under review. That brief and accompanying letter notified you of the General Counsel's intent to recommend to the Commission a finding of probable cause to believe Jim Rappaport for Senate and Vincent J. Santoro, as treasurer, violated 2 U.S.C. § 434(a)(6).

To date, you have not responded to the General Counsel's brief. Unless we receive a response from you within 10 days of your receipt of this letter, this Office will circulate a report to the Commission recommending a finding of probable cause. You should submit 10 copies of your response to the Secretary of the Commission, and forward 3 copies to the Office of the General Counsel.

Should you have any questions, please contact Jeffrey Long, the staff member assigned to this matter, at (202) 376-3690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: George F. Rishel
Assistant General Counsel

93040953656

ObC 8760

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

Paul E. Sullivan, Esq.

91 DEC 19 AM 9:11

The Singletary Mansion
1565 The Alameda
San Jose, CA 95126

December 12, 1991

Mr. Brei Long
Federal Election Commission
General Counsel's Office
999 E Street, N.W.
Washington, DC 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
91 DEC 19 PM 3:11

RE: MUR 3216 - Jim Rappaport for Senate Committee

Dear Mr. Long:

I have recently had forwarded to me your letter indicating that the General Counsel is proceeding with a recommendation to the Commission of probable cause of a 2 U.S.C. §434(a) (6) violation in the above referenced matter.

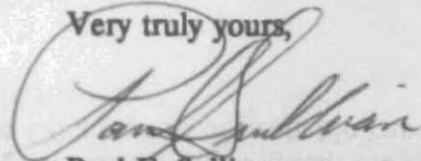
I have recently left the law firm with whom I was previously associated and due to that delay, apparently these documents have just recently been forwarded to me.

On this date, I have sent to Mr. Rappaport the Counsel's brief and recommendations for his review and correspondence back to me for appropriate action. I would request at this point in time a 15 day extension of time in which to respond to the Commission on this matter.

Given the facts set forth in the case, I believe that an appropriate response may be submitted no later Friday, December 27, 1991.

I thank you for your time attention to this matter.

Very truly yours,


Paul E. Sullivan

PES:hh

cc: James Rappaport

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 23, 1991

Paul E. Sullivan, Esquire
The Singletary Mansion
1565 The Alameda
San Jose, California 95126

RE: MUR 3216
Jim Rappaport for Senate and
Vincent J. Santoro, as treasurer

Dear Mr. Sullivan:

This is in response to your letter dated December 12, 1991, which we received on December 19, 1991, requesting an extension until December 27 to respond in the above-referenced matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on December 27, 1991.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeffrey D. Long", is written over the typed name.

Jeffrey D. Long
Paralegal

93040953658

JAMES WYANT RAPPAPORT
ATTORNEY AT LAW
ONE LONGFELLOW PLACE
BOSTON, MASSACHUSETTS 02114

(617) 227-7345 Fax No. (617) 227-4727

January 6, 1991

Mr. Jeffrey Long
Federal Election Commission
General Counsel's Office
999 E. Street, N.W.
Washington, DC 20463

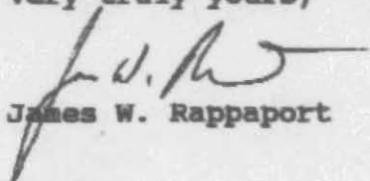
RE: MUR 3216 - Jim Rappaport for Senate Committee

Dear Mr. Long:

Per our conversation on Friday, January 3, 1991, I only received the materials concerning MUR 3216 upon my return from vacation last Friday. Please allow an extension of time to file a response until January 15, 1992.

I look forward to your response.

Very truly yours,


James W. Rappaport

JWR/db

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

92 JAN -6 PM 3:45



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 8, 1992

James Wyant Rappaport, Esquire
One Longfellow Place
Boston, Massachusetts 02114

RE: MUR 3216
Jim Rappaport for Senate and
Vincent J. Santoro, as treasurer

Dear Mr. Rappaport:

This is in response to your letter dated January 6, 1992, which we received on that day, requesting an extension until January 15, 1992, to respond in the above-referenced matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on January 15, 1992.

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

Sincerely,

A handwritten signature in cursive script, reading "Jeffrey D. Long", is written over the typed name.

Jeffrey D. Long
Paralegal

93040953660

Paul E. Sullivan, Esq.

The Singletary Mansion
1565 The Alameda
San Jose, CA 95126

January 28, 1992

Federal Election Commission
General Counsels Offices
Attn: Jeffrey D. Long
999 E Street, N.W.
Washington, DC 20463

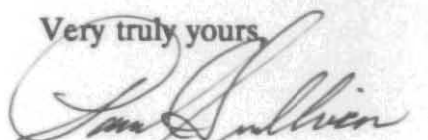
RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 JAN 29 PM 12:46

RE: MUR 3216 Probable Cause
Brief

Dear Mr. Long:

Please find enclosed a copy of the response to your Probable Cause Brief filed in the above reference matter. Should you have any questions regarding this matter, please contact me directly. I look forward to the resolution of this issue.

Very truly yours,



Paul E. Sullivan

cc: Chairman Joan Aikens
Vice Chairman, Scott Thomas
Commissioner, LeeAnn Elliott
Commissioner, John McGarry
Commissioner, Danny L. McDonald
Commissioner, Trevor Potter

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of
Rappaport for Senate Committee)
and Vincent Santoro, as Treasurer)
_____)

MUR 3216
Probable Cause Response Brief

I.

Introduction

Pursuant to 2 U.S.C. § 437g(a)(3), this response is filed on behalf of the Jim Rappaport for Senate Committee and Vincent J. Santoro, as Treasurer, (hereinafter "Respondent") with the Federal Election Commission ("FEC" or "Commission"), in answer to the Commission's general counsel brief recommending that the Commission make a finding of probable cause to believe that Respondent violated 2 U.S.C. § 434(a)(6).

II.

Factual Summary

By a letter dated October 25, 1991, the Commission's general counsel notified Respondent that after considering the available evidence in this matter, he was prepared to make a recommendation to the Commission that there was probable cause to believe that the Respondent had violated § 434(a)(6). Due to Respondent's counsel relocating, the probable cause brief was delayed in its receipt and as a result a request for an extension of time to respond to that brief was requested and granted by the general counsel's office. A second request for an extension of time was made and granted as a result of a request by Mr. Rappaport directly to the general counsel's office.

In its response brief to the reason the belief finding in this matter ("RTB Brief") Respondent acknowledged that there is not a dispute relative to the pertinent facts in this matter; specifically, the Respondent does not dispute the dates on which the loans were made, the dates on which they were reported, nor the date on which the "48 hour" notification was sent to the Secretary of the Senate. (RTB Brief pages 2-3) However, Respondent contends that there were several mitigating and extenuating circumstances which, when taken together, constitute a sufficient basis upon which the Commission should close the file on this matter.

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III Arguments

1. The regulations require the "48 hour" notice for contributions only and these candidate loans do not constitute contributions.

As noted in the RTB Brief, the Respondent treasurer was acting in that capacity for the first time and as such was not aware of the various commissions interpretations of the reporting requirements. (RTB Brief, p.3) Specifically, though the treasurer received a copy of the 48 hour notice requirement relative to the Massachusetts Primary Election, he did not comprehend that by the Commissions interpretation of the Regulations the "48 hour" reporting period applied not only to contributions but also to a candidate loans. Upon review of the language in that notice issued by the Commission, it is understandable how such a misinterpretation could be made. The language as it appears is entitled "Last-minute contributions." It states, "Committees must also file special notices on contributions of \$1,000 or more, received during the period of August 30 through September 15, 1990." (See "Primary Election Report Notice" for Massachusetts dated August 13, 1990, a true and complete copy which is attached at Exhibit "B" at RTB Brief)

That disclosure requirement on the 48 hour notice applies specifically to contributions of \$1,000 or more, and does not reference loans or expenditures by the candidate. By virtue of the amount of loans Mr. Rappaport had made to the committee, the treasurer was apparently aware that a candidate may loan an unlimited amount of personal funds to his principal campaign committee without those loans, being subject to the individual contribution limits.

However, as will be noted below, the only provision in the Federal Election Regulations, ("Regulations") which authorizes an unlimited amount of donations of a candidate's personal funds to his authorize committee, relates to an unlimited amount of "expenditures". Since the reporting notice calls for only "contributions" to the committee to be reported, there is a legitimate question as to whether the treasurer was required to disclose the financial loan activities in question.

The definition of a "contribution" includes, a loan, except for a loan made in accordance with 11 CFR 100.7(b)(11), and that provision does not address a candidate's personal loans but rather only loans which are received through a state bank, federally chartered depository institution or a depository institution insured by Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the National Credit Union Administration. (11 CFR § 100.7(a)(1). It should then be noted that within the definition of contribution at § 100.7(a) there is not a specific exclusion for a candidate to make an unlimited amount of "contributions" to his authorized committee. In addition, § 100.7(b) which sets out various exemptions to the definition of contribution, does not exempt a candidate's loans from the FECA contribution limits.

The applicable contribution limits states that, "No person shall make contributions to any candidate, his or her authorized political committees or agents with respect to any election for Federal office which, in the aggregate exceeds \$1,000." (11 CFR § 110.1(b)(1).

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The definition of "person" as it applies to § 110.1(b) is found at 11 CFR 100.10 and it includes, an individual, but does not exclude a candidate. Thus, a candidate is a person for purposes of § 110.1. It should also be noted that the definition does exclude the federal government or any authority of the federal government, thus indicating attention was given to listing intended exemptions from the definition. There is no other exemption on the face of the Regulations which could be read so as to enable a candidate to be exempt from the contribution limit at § 110.1(b). Therefore, if the loan which the Respondent received from the candidate, Mr. Rappaport, was in fact a "contribution" then it would have necessarily been subject to the \$1,000 per election limit, as is any other person. Knowing that the candidate had lawfully loaned more than \$1,000 to the Committee the treasurer reasonably concluded that candidates loans in excess of \$1,000 do not constitute contributions.

There are any number of exemptions from the definition of contribution which the Commission has incorporated into its Regulations. (See § 100.7(a) and (b)). By not exempting an individual candidate from the contribution limit, while also permitting unlimited loans, there is certainly an ambiguity which is raised relative to the classification of candidate loans in excess of \$1,000 as "contributions." It certainly would give the treasurer a reasonable basis upon which to presume that such loans made by the candidate were not considered to be contributions since they exceeded the individual limits. And, if they are not considered as contributions, correspondingly the treasurer would conclude the loans would not be subject to the 48 hour notice reporting of "contributions" requirement. It should also be noted that the Explanation and Justification does not address nor clarify this issue of a candidate's right to make unlimited contributions to his authorized committee.

As a secondary component of that argument, the Regulations clearly delineate the distinction between "contribution" and "expenditure". The Regulations specifically address the definition of a contribution and the exemptions to that definition (§ 100.7) and a separate provision relative to the definition of an expenditure and the exemptions thereof (§ 100.8). Thus, the treasurer is certainly on proper grounds to conclude after reviewing the Regulations that the terms are not interchangeable. Those which refer to "contributions" apply only to contributions and those which refer to "expenditures" apply only to expenditures as those terms as defined within the Regulations.

The only provision in the Regulations which reference the unlimited use of the candidate's personal funds relative to this issue is found at § 110.10(a). It states, "Except as provided in 11 CFR parts 9001, et seq. and 9031 et seq. candidates for Federal office may make unlimited expenditures from personal funds." (emphasis added) You will note that there is no corresponding Regulation which enables a candidate to make "unlimited contributions". As a side note, since these funds were provided by the candidate to the committee as a "loan" then the candidate was anticipating repayment of those funds. Therefore, his activity could not constitute an inkind contribution since he was anticipating these would be loans and ultimately repaid.

The argument might be made by the Commission that loans are considered to be contributions as defined in § 100.7(a). However, a loan is also an expenditure, as defined in § 108(a)(1). The distinction is not set out in the Regulations. Therefore, an analysis of these various provisions of the Regulations would reasonably lead the treasurer to conclude

that if the loans given by the candidate to the committee are in excess of the \$1,000 per election limit as set forth in § 110.1(b) then such loans would have to be classified as an "expenditure". By classifying the loan as an expenditure, the candidate could then take advantage of § 110.10(a) and make an unlimited "expenditure" loan (§ 100.8(a) to his committee. Alternatively, if the loan, were classified as a "contribution" loan (§ 100.7(a) then it would have to subscribed to the contribution limits of § 110.1(b). Since the loan would exceed the contribution limits, the treasurer would conclude it must be classified as an expenditure loan and utilize the unlimited availability of the candidate's personal funds as set out at § 110.10(a).

Based on that analysis, the treasurer in reviewing the Massachusetts report notice could properly read the instruction as requiring the special 48 hour notice for "contributions" as being limited only to those activities which fulfilled the definition of contribution. In addition, the Regulations at § 104.5(f) referencing the 48 hour notice requirement, speaks in terms of contributions of \$1,000 or more and does not speak in terms of expenditures or loans. Since these loans would not constitute a contribution, the Respondent treasurer's literal reading of the Regulations would properly have concluded that there was not a reporting requirement for the "expenditure" loans which were made directly to the authorized committee by the candidate.

2. The public policy underlying the "48 hour" notice was not violated in this case.

In addition to the clear legal rationale for the treasurer not having the responsibility to file a 48 hour notice for these loans, I would direct the Commission to the public policy underlying the purpose of this notice requirement. Specifically it is to provide the public with notification of interest groups who attempt to insert large sums of money, i.e. in excess of \$1,000, subsequent to the pre-election report. In this particular case, all the funds were personal funds loaned directly by the candidate and not derived by virtue of bank loans or third party collateralized loans, in any amount. Secondly, the candidate made in excess of \$4 million dollars in loans to his campaign committee between the time of his entrance into the primary and the conclusion of the general election. The periodic insertion of these loans to the campaign, certainly came as no great surprise or shock to the general public, the press, or even his opponents. To the contrary, the subject of the candidate's personal wealth and his loans to the committee were a major issue for which his opponent and the press were constantly attacking him.

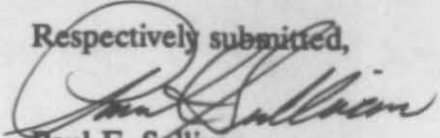
The complainant, who was the general election opponent of the Respondent, certainly had notice of these and the candidate's other loans in more than sufficient time to bring them to the attention of the press and the public. The August 30 and September 10 loans, were disclosed a full twenty-one (21) days before the general election and the October 18th loan was disclosed a full thirteen (13) days before the general election. Certainly these did not violate the general public policy relative to the 48 hour notice; they were disclosed in a sufficient time for the Respondent's opponent to bring them to the attention of the public and, to make a campaign issue of those loans. This is clearly the case in view of the fact the complaint attached an October 23, 1990 Boston Herald article about these loans and the complainant initially filed this matter (though it was held to be deficient on its face) prior to the election.

In addition, the fact that the funding for these loans was derived solely from the personal funds of the candidate, it did not introduce the traditional issue of "powerful interest" attempting to influence the campaign at the last moment. It was merely the candidate attempting to influence the outcome of his own campaign and that certainly could not come as a news surprise to any member of the electorate, the press, or his opponent.

CONCLUSION

For the reasons stated above, the Respondent would respectively request that the Commission making a finding of no probable cause and close the file.

Respectively submitted,


Paul E. Sullivan,
Counsel for Respondent

cc: James Rappaport
Vincent Santoro

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BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of

Jim Rappaport for Senate and
Vincent J. Santoro, as treasurer

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MUR 3216

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

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This matter was generated by a complaint filed by William Elsbree, treasurer of the Kerry for Senate in '90 Committee. Mr. Elsbree states that Mr. Rappaport loaned to his principal campaign committee, Jim Rappaport for Senate ("Respondents" or "Committee"), \$200,000 on August 30, 1990, and \$50,000 on September 10, 1990. The Massachusetts primary election was held on September 18, 1990, and the general election on November 6, 1990. Both of these contributions were made after the 20th day but more than 48 hours before the primary election. However, the contributions were not reported until they appeared on the Committee's 1990 October Quarterly Report, filed October 15, 1990. In addition, Mr. Rappaport made a \$500,000 loan to his campaign committee on October 18, 1990, (19 days before the general election), that the Committee did not report until October 23, 1990.

A response to the complaint was received on February 14, 1991, filed by Counsel representing both the Committee and the candidate in this matter. The Commission, on April 22, 1991, found reason to believe that the Committee violated 2 U.S.C. § 434(a)(6), and found no reason to believe and closed the file with respect to James Rappaport. The Respondents were notified on

May 3, 1991, of the Commission's findings. After receiving no response from the Respondents or their counsel, a General Counsel's Brief recommending probable cause to believe was mailed to the Respondents on October 25, 1991. This Office mailed a reminder letter on December 2, 1991, and granted additional time to respond on January 8, 1992. On January 29, 1992, a probable cause response brief was received in which the Counsel for the Respondents puts forth mitigating and extenuating circumstances which he believes will support a finding of no probable cause to believe and close this file.

II. ANALYSIS

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires principal campaign committees of candidates for federal office to notify in writing either the Secretary of the Senate, the Clerk of the U.S. House of Representatives or the Commission, as appropriate, and the Secretary of State, of each contribution totaling \$1,000 or more, received by any authorized committee of the candidate after the 20th day but more than 48 hours before any election. 2 U.S.C. § 434(a)(6)(A). The Act further requires notification to be made within 48 hours after the receipt of the contribution and to include the name of the candidate and office sought, the date of receipt, the amount of the contribution, and the identification of the contributor. Id. The notification of these contributions shall be in addition to all other reporting requirements. 2 U.S.C. § 434(a)(6)(B). According to 11 C.F.R. § 100.7(a)(1)(B), a loan is a contribution

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at the time it is made and is a contribution to the extent that it remains unpaid.

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The Federal Election Commission Schedule C of the Committee's 1990 October Quarterly Report lists two loans from James Rappaport's personal funds; one loan of \$200,000 was made on August 30, 1990, and the second loan of \$50,000 was made on September 10, 1990. On the Committee's 1990 Post-General Report Schedule C, a \$500,000 loan is listed from James W. Rappaport's personal funds to his committee. Commission records confirm the failure of the Committee to file 48 Hour Notices for the August 30 and September 10 loans. Respondents provided in their response to the complaint a copy of an "acknowledgment of receipt of facsimile 48 hour notification" from the Secretary of the Senate dated October 23, 1990, as evidence that the Committee did file, although not timely, a 48 Hour Report for the \$500,000 October 18 loan.

In their responses to the complaint and the brief, the Respondents do not dispute the dates the loans were made, their failure to file 48 Hour Notices for the August 30 and September 10 loans, or the lateness of the notification for the October 18 loan. Respondents do contend that their failure to report these contributions within the required 48 hours was due to their belief that the provision did not include loans which a committee receives from the candidate. Counsel, in his response brief, states that the Committee's treasurer relied upon his literal reading of the primary reporting notice received from the Federal Election Commission, which did not state that candidate loans over

\$1,000 were to be disclosed under the 48 Hour Notice provisions. Counsel also examines the Regulations to demonstrate how the treasurer may have misinterpreted the 48 Hour disclosure requirements.

Counsel also argues that the public policy underlying the requirement to file 48 Hour Notices was not violated by the Committee because the public was already aware that the Committee was receiving loans from the candidate and the three loans at issue "certainly came as no great surprise or shock to the general public, the press, or even his opponents." Second, according to the response, the public policy was not violated because "the August 30 and September 20 loans were disclosed a full 21 days before the general election and the October 18 loan was disclosed a full 13 days before the general election." Finally, Counsel states that the Respondents have a severe outstanding debt and that "no utility would be served in assessing a civil penalty." He continues that the general public and future candidates would be better served by an amendment to the Regulations that clarifies that candidate loans are subject to the 48 Hour disclosure requirements.

The Respondents have provided possible mitigating arguments that the Committee's treasurer misinterpreted the Regulations causing the three 48 Hour Notices not to be filed as required, and have pointed out that the three contributions were disclosed prior to the general election. The Respondents however fail to specify that although the August 30 and September 20 loans were reported prior to the general election, they should have been reported

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prior to the September 18, 1990, primary election. Instead, those two loans were disclosed 27 days after the primary election. Counsel also asserts that the Committee is severely in debt. It is noted that the majority of the Committee's debt is comprised of the outstanding loans which the candidate made to the Committee.¹ Given these mitigating circumstances, the Respondents nonetheless do not dispute their failure to file 48 Hour Notices for the August 30 and September 10 loans, or the lateness of the notification for the October 18 loan. Therefore, the Office of the General Counsel recommends that the Commission find probable cause to believe Jim Rappaport for Senate and Vincent J. Santoro, as treasurer, violated 2 U.S.C. § 434(a)(6).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

The Office of the General Counsel also recommends that the Commission approve the attached conciliation agreement

1. The Committee's 1991 Year-End Report discloses \$447 in receipts, \$6,143 in disbursements, \$1,422 cash on hand and \$4,286,802 in debts owed by the Committee. Of the \$4,286,802 total debt, \$4,210,000 are outstanding loans to the candidate.

IV. RECOMMENDATIONS

1. Find probable cause to believe that Jim Rappaport for Senate and Vincent J. Santoro, as treasurer, violated 2 U.S.C. § 434(a)(6).
2. Approve the attached conciliation agreement and appropriate letter.

Date

3/18/92

Lawrence M. Noble
General Counsel

Attachments:

1. Response Brief
2. Conciliation Agreement

Staff assigned: Jeffrey Long

93040953672

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Jim Rappaport for Senate and) MUR 3216
Vincent J. Santoro, as treasurer.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on March 24, 1992, the Commission decided by a vote of 4-0 to take the following actions in MUR 3216:

1. Find probable cause to believe that Jim Rappaport for Senate and Vincent J. Santoro, as treasurer, violated 2 U.S.C. § 434(a)(6).
2. Approve the conciliation agreement and appropriate letter, as recommended in the General Counsel's Report dated March 18, 1992.

Commissioners Elliott, McDonald, Potter and Thomas voted affirmatively for the decision; Commissioners Aikens and McGarry did not cast votes.

Attest:

3/24/92
Date

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

Received in the Secretariat:	Wed., March 18, 1992 4:45 p.m.
Circulated to the Commission:	Thurs., March 19, 1992 4:00 p.m.
Deadline for vote:	Tues., March 24, 1992 4:00 p.m.

dr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 27, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Paul E. Sullivan, Esquire
The Singletary Mansion
1565 The Alameda
San Jose, California 95126

RE: MUR 3216
Jim Rappaport for Senate and
Vincent J. Santoro, as treasurer

Dear Mr. Sullivan:

On March 24, 1992, the Federal Election Commission found that there is probable cause to believe your clients, Jim Rappaport for Senate and Vincent J. Santoro, as treasurer, violated 2 U.S.C. § 434(a)(6), a provision of the Federal Election Campaign Act of 1971, as amended, in connection with contributions received during the 48 Hour Reporting period prior to the 1990 elections.

The Commission has a duty to attempt to correct such violations for a period of 30 to 90 days by informal methods of conference, conciliation, and persuasion, and by entering into a conciliation agreement with a respondent. If we are unable to reach an agreement during that period, the Commission may institute a civil suit in United States District Court and seek payment of a civil penalty.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission within ten days. I will then recommend that the Commission accept the agreement. Please make your check for the civil penalty payable to the Federal Election Commission.

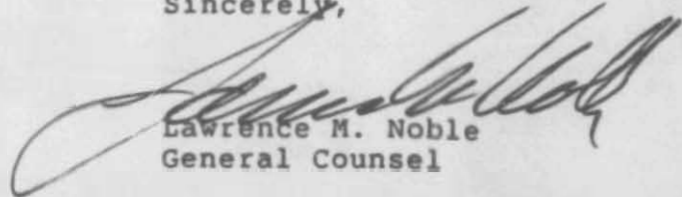
If you have any questions or suggestions for changes in the enclosed conciliation agreement, or if you wish to arrange a

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Paul E. Sullivan, Esquire
Page 2

meeting in connection with a mutually satisfactory conciliation agreement, please contact Jeffrey Long, the staff member assigned to this matter, at (202) 219-5690.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 30, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Paul E. Sullivan, Esquire
The Singletary Mansion
1565 The Alameda
San Jose, CA 95126

RE: MUR 3216
Jim Rappaport for Senate and
Vincent J. Santoro, as
treasurer

Dear Mr. Sullivan:

On March 27, 1992, you were notified that the Federal Election Commission found probable cause to believe that Jim Rappaport for Senate and Vincent J. Santoro, as treasurer, violated 2 U.S.C. § 434(a)(6). On that same date, you were sent a conciliation agreement offered by the Commission in settlement of this matter.

Please note that pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), the conciliation period in this matter may not extend for more than 90 days, but may cease after 30 days. By telephone, you had indicated that a response would be filed in early June. Insofar as more than 90 days has elapsed without a written response from you or your clients, the Office of the General Counsel will recommend that the Commission authorize the filing of a civil suit unless we receive a response from you with 15 days of your receipt of this letter.

Should you have any questions, please contact Jeffrey D. Long, the staff member assigned to this matter, at (202) 376-3690.

Sincerely,

George F. Rishel
George F. Rishel
Assistant General Counsel

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Paul E. Sullivan, Esq.
Attorney-at-Law

The Singletary Mansion
1565 The Alameda
San Jose, CA 95126

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April 2, 1993

Jeffrey D. Long, Esquire
Federal Election Commission
General Counsel's Office
999 E Street, N.W.
Washington, DC 20463

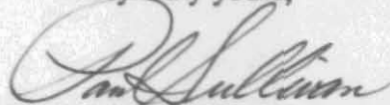
Re: Conciliation Agreement MUR 3216

Dear Mr. Long:

Pursuant to our previous discussions, please find enclosed an executed copy of your proposed Conciliation Agreement in MUR 3216 and a check in the amount of nine thousand dollars (\$9,000) payable to the United States Treasury as full and complete payment of the proposed civil penalty in this matter.

Please contact me if you have further comments or questions.

Very truly yours,



Paul E. Sullivan

cc: James Rappaport
Vincent Santoro

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Paul E. Sullivan, Esq.
Attorney-at-Law

The Singletary Mansion
1565 The Alameda
San Jose, CA 95126

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June 29, 1993

Mr. Jeffrey Long
Federal Election Commission
General Counsel's Office
999 E Street, N.W.
Washington, D.C. 20463

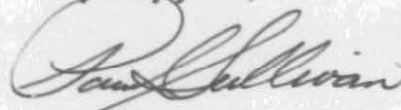
RE: MUR 3216

Dear Mr. Long:

Pursuant to our previous conversation, please find enclosed a check (#3210) drawn in the amount of three thousand dollars (\$3,000.00) payable to the United States Treasury, representing partial payment of the civil penalty in the above-referenced matter. As you are aware, I have previously tendered to you a check in the amount of nine thousand dollars (\$9,000.00) which I understand the General Counsel's Office is holding in its trust account. This brings to a total of twelve thousand dollars (\$12,000.00) tendered as a full and complete civil penalty payment in the above-referenced matter.

I presume that you will amend the conciliation agreement in the matter to reflect the additional civil penalty. Should you have further questions, please contact me at your convenience.

Very truly yours,



Paul Sullivan

Enclosure

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Paul E. Sullivan, Esq.
Attorney-at-Law

The Singletary Mansion
1565 The Alameda
San Jose, CA 95126

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July 16, 1993

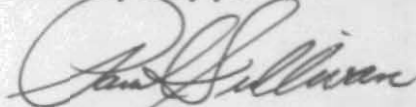
Mr. Jeffrey Long
Federal Election Commission
General Counsel's Office
999 E Street, N.W.
Washington, DC 20463

Re: MUR 3216

Dear Mr. Long:

Please find enclosed an executed copy of the conciliation agreement in the above-referenced matter. As you are aware, two (2) checks representing payment of the twelve thousand dollars (\$12,000.00) are on deposit with your office.

Very truly yours,



Paul E. Sullivan

Enclosure

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RECEIVED
FEDERAL ELECTION COMMISSION

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Jim Rappaport for Senate and
Vincent J. Santoro, as treasurer

)
) MUR 3216
)

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement which has been signed by Paul E. Sullivan, legal counsel for Jim Rappaport for Senate and Vincent J. Santoro, as treasurer. (Attachment 3).

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Two checks totaling \$12,000 have been received.

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II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with Jim Rappaport for Senate and Vincent J. Santoro, as treasurer.

2. Close the file.
3. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

Date August 2, 1993

BY: *L. G. Lerner* (JFK)
Lois G. Lerner
Associate General Counsel

Attachments

1. Conciliation Agreement (FEC proposal)
- 2.
- 3.
4. Photocopy of civil penalty checks

Staff Assigned: Jeffrey Long

93040953682

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Jim Rappaport for Senate and) MUR 3216
Vincent J. Santoro, as treasurer.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 5, 1993, the Commission decided by a vote of 6-0 to take the following actions in MUR 3216:

1. Accept the conciliation agreement with Jim Rappaport for Senate and Vincent J. Santoro, as treasurer, as recommended in the General Counsel's Report dated August 2, 1993.
2. Close the file.
3. Approve the appropriate letters, as recommended in the General Counsel's Report dated August 2, 1993.

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

Attest:

8-6-93
Date

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

Received in the Secretariat: Mon., Aug. 02, 1993 3:09 p.m.
Circulated to the Commission: Tues., Aug. 03, 1993 11:00 a.m.
Deadline for vote: Fri., Aug. 06, 1993 4:00 p.m.

bjr

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Jim Rappaport for Senate and) MUR 3216
Vincent J. Santoro, as treasurer)
)

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by William L. Elsbree, treasurer of the Kerry for Senate in '90 Committee. An investigation was conducted, and the Federal Election Commission ("Commission") found probable cause to believe that Jim Rappaport for Senate and Vincent J. Santoro, as treasurer, ("Respondents") violated 2 U.S.C. § 434(a)(6).

NOW, THEREFORE, the Commission and the Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.
- II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondents enter voluntarily into this agreement with the Commission.
- IV. The pertinent facts in this matter are as follows:
 1. James W. Rappaport was the Republican candidate for Senator in the 1990 Primary Election and the Republican nominee for the General Election in the State of Massachusetts.
 2. Jim Rappaport for Senate is a political committee within the meaning of 2 U.S.C. § 431(4), and is the authorized

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principal campaign committee for Mr. Rappaport's 1990 senatorial campaign.

3. Vincent J. Santoro is the treasurer of Jim Rappaport for Senate.

4. The Federal Election Campaign Act of 1971, as amended ("the Act"), requires principal campaign committees of candidates for federal office to notify in writing either the Secretary of Senate, the Clerk of the U.S. House of Representatives or the Commission, as appropriate, and the Secretary of State, of each contribution totaling \$1,000 or more, received by any authorized committee of the candidate after the 20th day but more than 48 hours before any election. 2 U.S.C. § 434(a)(6)(A). The Act further requires notification to be made within 48 hours after the receipt of the contribution and to include the name of the candidate and office sought, the date of receipt, the amount of the contribution, and the identification of the contributor. Id. The notification of these contributions is in addition to all other reporting requirements. 2 U.S.C. § 434(a)(6)(B).

5. According to 2 U.S.C. § 431(8)(A) and 11 C.F.R. § 100.7(a)(1)(B), a loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. Each guarantor or endorser of a loan shall be deemed to have contributed that portion of the total amount of the loan for which the guarantor or endorser agreed to be liable until the loan is repaid. 2 U.S.C. § 431(8)(B)(vii)(I) and 11 C.F.R. § 100.7(a)(1)(i)(C).

6. The date of the Primary Election was September 18,

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1990. Jim Rappaport for Senate received loans from Mr. Rappaport for the Primary Election on August 30 in the amount of \$200,000 and on September 10 in the amount of \$50,000, totaling \$250,000. The August 30 and September 10 contributions were reported on Schedules A and C of the Committee's October Quarterly Report. The Respondents did not submit 48 Hour Notices for these two contributions.

7. On October 18, Mr. Rappaport loaned the Respondents \$500,000. Although this contribution was reported on the Respondent's Post-General Report, the Respondents did not submit a 48 Hour Notice for the contribution received on October 18 until October 23, 1990.

8. Respondents contend; that there was an ambiguity in the FEC regulations as to whether funds loaned to a committee by the candidate are required to be disclosed by the 48 hour notice procedure; that this raised a reasonable doubt in the Respondents' mind as to whether the loans required 48 hour disclosure; and that all loans made by Mr. Rappaport to the Respondents were fully disclosed by October 23, 1990, two full weeks before the General Election.

V. The Respondents failed to report three campaign contributions in excess of \$1,000 received after the 20th day, but more than 48 hours before the general election, within 48 hours of receipt of the contributions, in violation of 2 U.S.C. § 434(a)(6).

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VI. The Respondents will pay a civil penalty to the Federal Election Commission in the amount of twelve thousand dollars (\$12,000.00), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no


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other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel


BY:


Lois G. Lerner
Associate General Counsel

Date

8/12/93

FOR THE RESPONDENTS:


(Name) Paul Sullivan
(Position) Legal Counsel for Respondents

Date

July 15, 1993

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REF: MUR 3216

4-9-93

DATE	INVOICE	AMOUNT

5-13/110

"JIM RAPPAPORT FOR SENATE"

3207

PAY Nine thousand and no/100

DOLLARS

CHECK NO.	TO THE ORDER OF	DATE	GROSS AMOUNT	DISCOUNT	CHECK AMOUNT
3207	United States Treasury	3/29/93			9,000.00

Bank of New England, N.A.

[Signature]

⑈003207⑈ ⑆011000138⑆ 79658⑈8002⑈

93 APR -9 PM 3:32
RECEIVED
FEDERAL RESERVE BANK
WASHINGTON

93040953690

REF: MOR3216
"JIM RAPPAPORT FOR SENATE"

DATE	INVOICE	AMOUNT

5-13/110

3210

PAY Three thousand and 19/100 DOLLARS

CHECK NO.	TO THE ORDER OF	DATE	GROSS AMOUNT	DISCOUNT	CHECK AMOUNT
3210	United States Treasury	6/23/93			3,000.00

Bank of New England, N.A.

[Signature]

⑈003210⑈ ⑈011000138⑈ 79658⑈8002⑈



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 12, 1993

Paul Sullivan, Esquire
1225 I Street, N.W.
Suite 500
Washington, D.C. 20005

RE: MUR 3216
Jim Rappaport for Senate and
Vincent J. Santoro, as
treasurer

Dear Mr. Sullivan:

On August 5, 1993, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your client's behalf in settlement of a violation of 2 U.S.C. § 434(a)(6), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

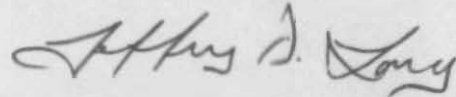
Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

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Paul Sullivan, Esquire
Page 2

Enclosed you will find a copy of the correct and fully
executed conciliation agreement for your files. If you have any
questions, please contact me at (202) 219-3690.

Sincerely,



Jeffrey D. Long
Paralegal

Enclosure
Conciliation Agreement

23040953692



CLOSED

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 12, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

William L. Elsbree
c/o The Finch Group
160 Federal Street
Boston, MA 02110

RE: MUR 3216

Dear Mr. Elsbree:

This is in reference to the complaint you filed with the Federal Election Commission on January 23, 1991, concerning Jim Rappaport for Senate and Vincent Santoro, as treasurer.

After conducting an investigation in this matter, the Commission found that there was probable cause to believe Jim Rappaport for Senate and Vincent Santoro, as treasurer, violated 2 U.S.C. § 434(a)(6), a provision of the Federal Election Campaign Act of 1971, as amended. On August 5, 1993, a conciliation agreement signed by the respondents was accepted by the Commission, thereby concluding the matter. Accordingly, the Commission closed the file in this matter on August 5, 1993. A copy of this correct and fully executed agreement is enclosed for your information.

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

Sincerely,

Jeffrey D. Long
Paralegal

Enclosure
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3216

DATE FILMED 8/27/93 CAMERA NO. 4

CAMERAMAN E.E.S.

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