



FEDERAL ELECTION COMMISSION  
WASHINGTON D.C. 20463

THIS IS THE BEGINNING OF MUR # 3620

DATE FILMED 9/25/95 CAMERA NO. 1

CAMERAMAN SES

95043690002



*Winning for California*

RECEIVED  
FEDERAL ELECTION  
COMMISSION

92 SEP 22 A 11:10

MUR 3617

September 21, 1992

Mrs. Joan Aikens  
Chairman  
Federal Election Commission  
999 East Street, NW  
Washington, D.C. 20463

Dear Madame Chairman:

This letter constitutes a formal complaint pursuant to 2 U.S.C. 437g(a) of the Federal Election Campaign Act (the "Act") and sets forth reasons to believe that violations of the Act and Federal Election Commission (the "Commission") regulations have been committed by the Feinstein for Senate Committee (the "Feinstein Campaign"), a political committee registered with the commission.

Enclosed you will find a copy of a solicitation letter from Dianne Feinstein to a prospective contributor in connection with an August 27th event involving Senator Lloyd Bentsen (the "Feinstein solicitation letter"). The Feinstein solicitation letter solicits a contribution to the Democratic Senatorial Campaign Committee (the "DSCC") and provides a response device (also enclosed) which directs that the contribution be forwarded to the Feinstein Campaign address - i.e., 11355 W. Olympic, Suite 510, Los Angeles, Ca. 90010.

The Feinstein solicitation letter and the response device, on their face, suggest that contributions from this mail solicitation are being "bundled" at Feinstein campaign headquarters, sent to the DSCC, and then "earmarked" by the DSCC for the benefit of the Feinstein Campaign.

Based on the above-referenced solicitation package and on other information and belief, the Feinstein Campaign is in violation of the Act for receiving excessive contributions from: (1) maxed-out donors to the Feinstein Campaign who contributed to the DSCC in response to the Feinstein solicitation letter and (2) donors who have not maxed out to the Feinstein Campaign but whose contribution to the DSCC in response to the Feinstein solicitation letter will put that donor over his or her \$1000 per election limitation. Furthermore, circumstances indicate that both the Feinstein Campaign and the DSCC did not comply with the Commission's regulations pertaining to earmarking.



Page Two  
Chairman Joan Aikens

As the Commission knows, all contributions by a person made on behalf of a candidate, including contributions which are in any way earmarked, are contributions from the person to the candidate. 11 C.F.R. 110.6(a). In the present matter, the Feinstein solicitation letter clearly suggests that contributions should be designated for the benefit of Dianne Feinstein. For example, the Feinstein solicitation letter stated "Your contribution to the DSCC can be credited to the Dianne Feinstein account" and "the DSCC tally" is an avenue for my maxed out donors to offer more support [emphasis added]. In addition, the response device states to "Please make check payable to Democratic Senatorial Campaign Committee ["Dianne Feinstein's account..."]."

Any such "designation...for [this] clearly identified candidate" made pursuant to the Feinstein solicitation letter would qualify as an earmarked contribution. See 11 C.F.R. 110.6 (c)(1). In either case, the funds were required to be forwarded to the Feinstein Campaign within ten days. 11 C.F.R. 102.8 (a) & (c). Ironically, the Feinstein Campaign was required to forward checks to the DSCC within the same period since it originally bundled the checks and since it is likely that some of the checks were made "Payable to the DSCC" without reference to a "Dianne Feinstein account."

Given the text of the Feinstein solicitation letter and its representation of what federal election law allows, there is no indication that the procedures of 11 C.F.R. 110.6 were complied with or ever will be.

Finally, the Feinstein solicitation letter recites what the Act permits an individual to contribute to the DSCC. However, it fails to tell the prospective donors that by designating their contributions for the "Dianne Feinstein account," they are in effect making a contribution to the Feinstein Campaign (as opposed to the DSCC) subject to their \$1000 per election contribution limitation.

Although the failure to represent this violates no provision of the Act, the contributions to the DSCC which resulted from the solicitation put numerous donors over their individual limits. Because of the language of 11 C.F.R. 110.6(a) set forth above, the Feinstein Campaign is in violation of the Act for accepting excessive contributions from its donors.

Page Three  
Chairman Joan Aikens

The Feinstein Campaign's process of laundering contributions through the DSCC violates express provisions of the Act and cannot be allowed to stand. Therefore, I ask that the Commission's Office of General Counsel expeditiously review this complaint and determine that it satisfies the criteria for opening a Matter Under Review into the alleged violations set forth above.

Sincerely,

*Richard H. McBride*  
Richard H. McBride

Sworn to and subscribed before me this 21st day of SEPT, 1992.

*Thomas G. Keivet*

Notary Public



My commission expires 9/26/94

95043690005

DIANNE FEINSTEIN  
11335 W. OLYMPIC, SUITE 510  
LOS ANGELES, CA 90064  
TELEPHONE: (310) 914-0660

August 9, 1992

Dear

Please join me and my special guest, United States Senator  
Lloyd Benksen:

Thursday, August 27th, 7:00 p.m.  
At the home of Lynne Wasserman  
514 Doheny Road  
Beverly Hills, CA

Senator Benksen is Chairman of the Senate Finance Committee.  
He is also a member of the Senate Commerce, Science and  
Transportation Committee and the Joint Economic Committee.

He has graciously agreed to help us raise money for my account  
with the Democratic Senatorial Campaign Committee.

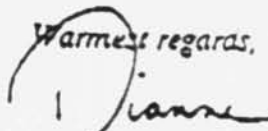
The DSCC is a Washington based group set up by U.S. Senators  
in the Democratic Party to help raise money and support for  
Democratic U.S. Senate candidates throughout the country. They can  
accept personal contributions of up to \$20,000 in a calendar year (and  
within an individual's \$25,000 yearly federal contribution limit). Your  
contribution to the DSCC can be credited to the Dianne Feinstein  
account.

I hope you will consider a contribution of at least \$1,000 per  
person to the DSCC. John Seymour will receive the maximum of \$2.5  
million from the Republican Senatorial Campaign Committee. I am  
hopeful that this evening will be a major fundraising event.

For those of you who have already maxed out to my campaign,  
the DSCC tally is an avenue through which you can offer more  
support. For further information regarding your donation to my DSCC  
account or my campaign, please call Tricia Riffenburgh at (310) 914-  
0660.

I look forward to seeing you on the 27th.

Warmest regards,

  
Dianne Feinstein



95043690006

FEINSTEIN FOR U.S. SENATE

I/We will attend the evening with Senator Bentsen.

Enclosed is my check for:

\_\_\_\$1,000\_\_\_\$5,000\_\_\_\$10,000\_\_\_\$20,000

I/We support Dianne, but cannot attend.

Enclosed is my check for \$\_\_\_\_\_.

Please make check payable to Democratic Senatorial Campaign Committee ("Dianne Feinstein's account" in the memo section).

Name \_\_\_\_\_ FED ID Number (if PAC) \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State/Zip \_\_\_\_\_

The Following Information is Required by the FEC:

Occupation \_\_\_\_\_

Employer \_\_\_\_\_

For additional information please call:  
Tricia Riffenburgh (310) 914-0660

Political contributions are not tax deductible. Corporate checks are not allowed.

(ID # C00042366 Tom Lehner, Treasurer.)

Authorized and paid for by the  
Democratic Senatorial Campaign Committee.



FEINSTEIN FOR U.S. SENATE  
11355 W. OLYMPIC, SUITE 510  
LOS ANGELES, CA 90064

ATTN: TRICIA RIFFENBURGH



95043690007



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 29, 1992

Richard H. McBride, Campaign Manager  
U.S. Senator John Seymour Committee  
150 Paularino Avenue  
Suite 275  
Costa Mesa, CA 92626

RE: MUR 3617

Dear Mr. McBride:

This letter acknowledges receipt on September 22, 1992, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by the Democratic Senatorial Campaign Committee and the Feinstein for Senate Committee. 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 3617. 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.

Sincerely,

A handwritten signature in cursive script, reading "Teresa A. Hennessy", is written above the typed name.

Teresa Hennessy  
Assistant General Counsel

Enclosure  
Procedures

95043690003



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 29, 1992

Michael J. Barrett, Treasurer  
Feinstein for Senate Committee  
909 Montgomery Street  
Suite 202  
San Francisco, CA 94133

RE: MUR 3617

Dear Mr. Barrett:

The Federal Election Commission received a complaint which indicates that the Feinstein for Senate Committee 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 3617. 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.

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Michael J. Barrett, Treasurer  
Feinstein for Senate Committee  
Page 2

If you have any questions, please contact Mary P. Mastrobatista, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

*Teresa A. Hennessy*

Teresa Hennessy  
Assistant General Counsel

Enclosures

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

CC: Honorable Dianne Feinstein

95043690010



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 29, 1992

Thomas J. Lehner, Treasurer  
Democratic Senatorial Campaign Committee  
430 South Capitol Street, S.E.  
Washington, D.C. 20003

RE: MUR 3617

Dear Mr. Lehner:

The Federal Election Commission received a complaint which indicates that the Democratic Senatorial Campaign Committee 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 3617. 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.

95043690011

Thomas J. Lehner, Treasurer  
Democratic Senatorial Campaign Committee

If you have any questions, please contact Mary P. Mastrobattista, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

*Teresa A. Hennessy*

Teresa Hennessy  
Assistant General Counsel

Enclosures

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

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92 SEP 24 PM12:16

**Seymour**  
U.S. SENATE

*Winning for California*

OGC6597

RECEIVED  
F.E.C.  
SECRETARIAT

92 SEP 24 AM11:36

September 23, 1992

BY FACSIMILE  
ORIGINAL BY FEDERAL EXPRESS

Ms. Joan Aikens  
Chair  
Federal Election Commission  
999 E Street N.W.  
Washington D.C. 20463

MUR 3617

Re: Complaint Against Dianne Feinstein for Senate  
Request for Immediate Action under Title 2, U.S.C.,  
section 437g (4) (A) or 6(A)

Dear Chairperson Aikens:

This letter is to follow up on my letter complaint dated September 21, 1992 against the Dianne Feinstein for Senate Committee for violating the Federal Election Campaign Act by soliciting excessive contributions to her campaign, laundered through the Democratic Senatorial Campaign Committee ("DSCC").

Non-partisan campaign watchdog organizations have been quoted as commenting that the Dianne Feinstein letter which I complained about in my September 21, 1992 letter was: "a very blatant appeal to get around the contribution limits" (Ruth Holton, Acting Director of California Common Cause) and "the baldest statement of [trying to circumvent contribution caps] that I've ever seen." (Ellen Miller, Executive Director of the Center for Responsive Politics) (The Sacramento Bee, September 22, 1992, copy attached).

Now, a second appeal from the Dianne Feinstein for Senate Committee, very similar in content and style to the first letter of which I complained, indicates that the Dianne Feinstein for Senate Committee is engaged in an ongoing attempt to violate federal election limits. For that reason, I am requesting that the Federal Election Commission take immediate action under Title 2, United States Code, section 437g, to:

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Page Two  
Ms. Joan Aikens

95043690014  
(1) Ensure immediate compliance by the Dianne Feinstein for Senate Committee and the Democratic Senatorial Campaign Committee with the \$1,000 per contributor limitation, and 11 C.F.R. section 110.6, by: ordering the committees immediately to identify and sequester any funds bundled by the Feinstein Committee for the DSCC which are earmarked for the "Feinstein account" or "Feinstein Tally" at DSCC, and to cease and desist from contributing or spending the funds of any person whose contributions to the Feinstein committee, including those made payable to DSCC and earmarked for "Feinstein account" or "Feinstein Tally", exceeds \$1,000 for the 1992 general election. Under section 437g, subsection 4(A) of the Act, the Commission should take immediate compliance action, short of litigation under subsection 6(A), to secure immediate compliance, in the face of continuing actions of the Feinstein committee and the DSCC to violate the contribution limits of the Act in this fashion.

(2) If such efforts are unsuccessful in ensuring compliance, within 15 days to take such steps, including action for an injunction or restraining order, to secure full compliance with the law, under subsection 6(A) of section 437g of the Act.

The second letter from the Dianne Feinstein for Senate Committee, signed by Henry Berman, Chair, Host Committee, solicits contributions to the Feinstein committee, payable to either the Committee or to DSCC. The second letter, like the first letter of August 9, 1992, indicates the Feinstein committee's continuing attempt to solicit earmarked funds from maxed out donors to be sent to the DSCC, in amounts from \$2,500 to \$20,000, for the use of the Feinstein campaign. As with the first letter, the second letter directs the donor to contact a staff person for the "Feinstein for Senate Committee" in order to respond to the solicitation. Whether via the "bundling" technique, the earmarking direction, or both, this is a blatant attempt to circumvent the contribution limits applicable to the Feinstein campaign.

Page Three  
Ms. Joan Aikens

The letter states:

"To win the election, Dianne needs our financial assistance...As an individual, you can contribute up to \$1,000 directly to the 'Feinstein for Senate' Committee. Contributions in excess of \$1,000 must be made payable to the 'Democratic Senatorial Campaign Committee' (DSCC) and marked 'Feinstein Tally.'" (Emphasis added).

The response device provides boxes for the solicitees to check whether they will contribute or pledge to raise funds earmarked "Dianne's Tally" payable to the DSCC if in excess of \$1,000, or directly to Feinstein's committee in amounts of \$1,000. The response device identifies the Feinstein committee's federal identification number, address and authorization.

This request for immediate corrective action by the Commission is necessitated by the continuing nature of the conduct in question by the Feinstein committee. In the absence of such action, it is clear that the Feinstein committee, together with the DSCC, will attempt to evade the contribution limits of the Act, the outcome of which could affect the election itself. The public has every right to expect immediate, vigorous enforcement in this matter.

Very truly yours,

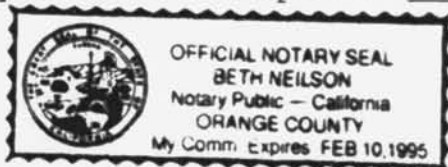
*Richard H. McBride*  
Richard H. McBride

Enclosures

{Subscribed and sworn before me this 23 day of September, 1992 at Costa Mesa, California. }  
ss.State of California  
County of Orange

*Beth Neilson*  
Notary Public

My Commission Expires: 2-10-95







September 14, 1992

[REDACTED]

Dear [REDACTED]

We are supporting Dianne Feinstein in her bid for the United States Senate. As members of the Bay Area Jewish Community, we believe that Dianne Feinstein will serve as an articulate and forceful advocate for a strong United States / Israeli relationship.

As you know, the relationship between the United States and Israel has deteriorated considerably during the last four years of the Bush Administration. And though, with the election of Rabin, this relationship seems to be back on track, it is still critical to our community that we elect and support national leaders who will be strong pro-Israel advocates.

In the race for the two-year seat, Dianne Feinstein is the clear choice for our community. On domestic issues, Dianne will work hard for social justice and equality, the absence of prayer from schools, and for a woman's fundamental right to choose. Regarding Israel, Dianne will push for providing loan guarantees without pre-conditions, lead the override of any presidential veto aimed at curbing Israel's strength or security, and focus on rehabilitating the relationship between the United States and Israel.

To win the election, Dianne needs our financial assistance.

Please consider joining us on the host committee for a fundraising reception to be held in Dianne's honor on October 12, 1992 from 5:30 to 7:30. Details regarding the location will be finalized shortly.

You may wish to participate as a Benefactor, Patron or Sponsor by contributing or raising \$5,000, \$2,500 or \$1,000 respectively.

909 Montgomery Street  
Suite 202  
San Francisco, CA 94133  
415 433-1333 Fax 433-3213 or 705-8712

11355 West Olympic Boulevard  
Los Angeles, CA 90010  
310 914-0660 Fax 914-0688

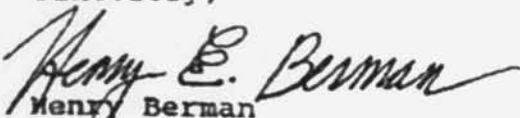
★  
Paid for and authorized by  
Feinstein for Senate Committee F.E.C. I.D. C00250530

As an individual, you can contribute up to \$1,000 directly to the "Feinstein For Senate" Committee. Contributions in excess of \$1,000 must be made payable to the "Democratic Senatorial Campaign Committee" (DSCC) and marked "Feinstein Tally." The DSCC is the mechanism for U.S. Senate Candidates to receive their allocation from the Democratic Party and Dianne is eligible to receive \$2.5 million from this committee. Our hope is that thought this event, we will take advantage of this opportunity to raise significant funds.

Please R.S.V.P with the enclosed response card or by calling Craig Jones at 415/705-8709 by Wednesday, September 23rd, so that we may include your name on the invitation.

We believe that by supporting Dianne Feinstein, we are investing in our future. Please join us.

Sincerely,

  
Henry Berman  
Chair, Host Committee

Host Committee (partial list)

Gerson Bakar  
Henry Berman  
Edward Bransten  
John Freidenrich  
Amy Friedkin  
Eugene Friend  
Madeleine Russell  
Roselyne Swig

95043690017

I am honored to be a member of  
The Host Committee for the  
Jewish Community Fundraiser  
Honoring  
Dianne Feinstein  
on October 12, 1992

Please reserve a space in my name on the  
invitation as a:

**BENEFACTOR:**

- ☐ Enclosed is my check for \$5,000  
(payable to the "Democratic  
Senatorial Campaign Committee"  
marked for Dianne's tally)  
OR  
☐ I pledge to raise \$5,000

**PATRON:**

- ☐ Enclosed is my check for \$2,500  
(payable to the "Democratic  
Senatorial Campaign Committee"  
marked for Dianne's tally)  
OR  
☐ I pledge to raise \$2,500

**SPONSOR:**

- ☐ Enclosed is my check for \$1,000  
(payable to "Feinstein for Senate")  
OR  
☐ I pledge to raise \$1,000

Name: \_\_\_\_\_

Occupation: \_\_\_\_\_

Employer: \_\_\_\_\_

Political Contributions are not tax deductible  
Corporate Checks are not accepted  
(FEC ID C00250530, Michael Barrett, Treasurer)

N74

**DIANNE FEINSTEIN**

909 Montgomery Street, Suite 202

San Francisco, CA 94133

95043690018



September 25, 1992

To whom it may concern:

This letter is to confirm that Bill Oldaker is an attorney for Feinstein For U.S. Senate, and will represent the campaign in all matters before the Federal Election Commissions.

Sincerely,

Kam Kuwata  
Campaign Manager

92 SEP 28 PM 3:59

FEDERAL ELECTION COMMISSION

9504369019

909 Montgomery Street  
Suite 404  
San Francisco, CA 94133  
415 433-1333 Fax 433-3213



655 Fourth Avenue  
Suite 19  
San Diego, CA 92101  
619 232-7366 Fax 232-7367



11355 West Olympic Boulevard  
Suite 510  
Los Angeles, CA 90064  
310 914-0660 Fax 914-0688

MOF 3617 OGC6662

MANATT, PHELPS, PHILLIPS & KANTOR

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

1200 NEW HAMPSHIRE AVENUE, N.W.

SUITE 200

WASHINGTON, D.C. 20036-6889

TELEPHONE (202) 463-4300

FAX (202) 463-4394

(202) 463-4395

LOS ANGELES

1385 WEST OLYMPIC BOULEVARD

LOS ANGELES, CALIFORNIA 90064-6544

(310) 382-4000

September 28, 1992

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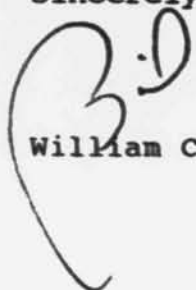
FEDERAL ELECTION COMMISSION

Lawrence M. Noble, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Larry:

I will be representing the Dianne Feinstein for U.S. Senate campaign with regard to the recent complaint filed against her by Senator Seymour.

Sincerely,



William C. Oldaker

Enclosure

95043690020



FEDERAL ELECTION COMMISSION  
WASHINGTON D.C. 20463

October 2, 1992

Richard H. McBride, Campaign Manager  
U.S. Senator John Seymour Committee  
150 Paularino Avenue  
Suite 275  
Costa Mesa, CA 92626

RE: MUR 3617

Dear Mr. McBride:

This letter acknowledges receipt on September 24, 1992, of the amendment to the complaint you filed on September 22, 1992, against the Democratic Senatorial Campaign Committee and Thomas J. Lehner, as treasurer, and the Feinstein for Senate Committee and Michael J. Barrett, as treasurer. The respondents will be sent copies of the amendment. You will be notified as soon as the Federal Election Commission takes action on your request for injunctive relief.

Sincerely,

A handwritten signature in cursive script, reading "Mary P. Mastrobattista", is written over the typed name.

Mary P. Mastrobattista  
Attorney

95043690021





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 2, 1992

William C. Oldaker, Esq.  
Manatt, Phelps, Phillips & Kantor  
1200 New Hampshire Ave., N.W.  
Suite 200  
Washington, D.C. 20036-6889

RE: MUR 3617  
Feinstein for Senate Committee  
and Michael J. Barrett, as  
treasurer

Dear Mr. Oldaker:

On September 29, 1992, your clients were notified that the Federal Election Commission received a complaint from Richard H. McBride alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time your clients were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On September 24, 1992, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information. As this new information is considered an amendment to the original complaint, you are hereby afforded an additional 15 days in which to respond to the allegations.

If you have any questions, please contact me at  
(202) 219-3400.

Sincerely,

*Mary P. Mastrobattista*

Mary P. Mastrobattista  
Attorney

Enclosure

950436900222



FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

October 2, 1992

Thomas J. Lehner, Treasurer  
Democratic Senatorial Campaign Committee  
430 South Capitol Street, S.E.  
Washington, D.C. 20003

RE: MUR 3617  
Democratic Senatorial Campaign  
Committee and Thomas J. Lehner,  
as treasurer

Dear Mr. Lehner:

On September 29, 1992, you were notified that the Federal Election Commission received a complaint from Richard H. McBride alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On September 24, 1992, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information. As this new information is considered an amendment to the original complaint, you are hereby afforded an additional 15 days in which to respond to the allegations.

If you have any questions, please contact me at  
(202) 219-3400.

Sincerely,

*Mary P. Mastrobattista*

Mary P. Mastrobattista  
Attorney

Enclosure

95043690023

OGC 6961

MANATT, PHELPS, PHILLIPS & KANTOR

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

1200 NEW HAMPSHIRE AVENUE, N.W.

SUITE 200

WASHINGTON, D.C. 20036-6869

TELEPHONE (202) 463-4300

FAX (202) 463-4394

(202) 463-4395

LOS ANGELES  
1295 WEST OLYMPIC BOULEVARD  
LOS ANGELES, CALIFORNIA 90015  
(213) 291-2000

RECEIVED  
OCT 16 PM 4:53  
FEDERAL ELECTION COMMISSION

October 16, 1992

Lawrence M. Noble, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

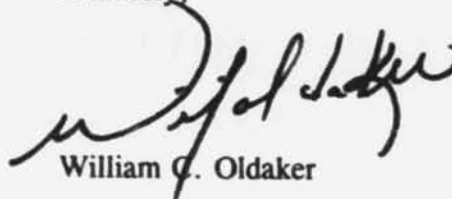
Re: **MUR 3617**

Dear Mr. Noble:

We are hereby requesting an extension of time to respond to the complaint in the above-referenced matter under review. This need for an extension is based on previously scheduled absences of counsel as well as scheduling conflicts with persons who have material information on this matter and our resulting inability to adequately prepare a response within the initial period.

For these reasons, we request an extension of 20 days, setting the new deadline on November 10, 1992. Thank you for your consideration of this request.

Sincerely,



William C. Oldaker

95043690024



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 21, 1992

William C. Oldaker, Esq.  
Manatt, Phelps, Phillips & Kantor  
1200 New Hampshire Ave., N.W.  
Suite 200  
Washington, D.C. 20036-6889

RE: MUR 3617  
Feinstein for Senate Committee  
and Michael J. Barrett, as  
treasurer

Dear Mr. Oldaker:

This is in response to your letter dated October 16, 1992, which we received that same day requesting an extension of twenty days to respond to the complaint filed against your clients in this 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 November 10, 1992.

If you have any questions, please contact me at  
(202) 219-3400.

Sincerely,

A handwritten signature in cursive script, reading "Mary P. Mastrobattista".

Mary P. Mastrobattista  
Attorney

95043690025



FEDERAL ELECTION COMMISSION  
WASHINGTON D.C. 20463

RECEIVED  
F.E.C.  
SECRETARIAT

92 OCT 20 PM 4:34

October 20, 1992

**SENSITIVE**

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble  
General Counsel

BY: Lois G. Lerner *[Signature]*  
Associate General Counsel

SUBJECT: MUR 3617  
Feinstein for Senate Committee and Michael J. Barrett,  
as treasurer  
Democratic Senatorial Campaign Committee and Thomas J.  
Lehner, as treasurer

BACKGROUND

On September 22, 1992, Richard H. McBride ("the complainant") filed a complaint against the Feinstein for Senate Committee and Michael J. Barrett, as treasurer, and the Democratic Senatorial Campaign Committee ("DSCC") and Thomas J. Lehner, as treasurer, ("the respondents") alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). These allegations were based on a letter from Dianne Feinstein soliciting contributions for her "account" with the DSCC.

On September 24, 1992, the complainant filed an amendment to the complaint alleging additional possible violations of the Act, and requesting immediate compliance action and injunctive relief. Specifically, the complainant requested that the Commission take steps to ensure immediate compliance with the Act by ordering the respondents to take the following actions:

. . . to identify and sequester any funds bundled by the Feinstein Committee for the DSCC which are earmarked for the 'Feinstein account' or 'Feinstein Tally' at DSCC, and to cease and desist from contributing or spending the funds of any person whose contributions to the Feinstein committee, including those made payable to DSCC and earmarked for 'Feinstein account' or 'Feinstein Tally', exceeds \$1,000 for the 1992 general election.

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Furthermore, the complainant requests that "if such efforts are unsuccessful in ensuring compliance, within 15 days [the Commission] take such steps, including action for an injunction or restraining order, to secure full compliance with the law, under subsection 6(A) of section 437g of the Act."

#### LEGAL AND FACTUAL ANALYSIS

This Office recommends that the Commission deny the complainant's request for injunctive relief at this time, as there is insufficient evidence to warrant the Commission's seeking such relief. The Commission is empowered to initiate a civil suit for injunctive relief if it is unable to correct or prevent a violation of the Act. 2 U.S.C. §§ 437d(a)(6) and 437g(a)(6). The procedure for pursuing that immediate remedy is problematic since the Commission must normally wait 15 days before it takes action on a complaint. 2 U.S.C. § 437g(a)(1).

In considering whether injunctive relief should be sought, the Commission has used the criteria for obtaining a preliminary injunction as the appropriate standard. This standard examines the requested relief in these terms:

- (1) whether there is a substantial likelihood that a violation of the Act has or is about to occur;
- (2) whether the failure by the Commission to obtain an injunction will result in irreparable harm to the complainant or some other party;
- (3) whether the injunctive relief will result in undue harm or prejudice to the interests of other persons; and
- (4) whether the public interest would be served by such injunctive relief.

With these criteria in mind, this Office turns to the complainant's request for injunctive relief. The complainant has presented two solicitation letters and response cards seeking contributions to the DSCC designated for "Dianne Feinstein's account" or "Dianne's tally". The complainant alleges that contributions from the solicitation letters "are being 'bundled' at Feinstein campaign headquarters, sent to the DSCC, and then 'earmarked' by the DSCC for the benefit of the Feinstein Campaign." The complainant alleges that the Feinstein for Senate Committee and Michael J. Barrett, as treasurer, have violated 2 U.S.C. § 441a(f) and 11 C.F.R. §§ 102.8 and 110.6(c) by soliciting contributions in this matter. The complainant also indicates that the DSCC and Thomas J. Lehner, as treasurer, have violated 11 C.F.R. §§ 102.8 and 110.6(c). Furthermore, the complainant alleges that the second solicitation letter demonstrates that the Feinstein for Senate Committee and Michael J. Barrett, as treasurer, are "engaged in an ongoing attempt to violate federal election limits."

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9 5 0 4 3 6 9 0 0 2 8  
A preliminary review indicates that a response from the respondents and further analysis are required to determine whether a substantial violation of the Act has occurred. In addition, an investigation to ascertain the key facts may be necessary. Thus, based on the information presently available, this Office cannot state that there is a substantial likelihood that a violation of the Act has occurred or is about to occur. Further, this Office does not believe that the other three criteria for seeking injunctive relief are met here. This Office does not believe that the failure to obtain an injunction will result in irreparable harm to the complainant or other parties. Conversely, this Office believes that an injunction would result in undue harm or prejudice to the interests of the respondents. Finally, this Office believes an injunction would not serve the public interest in that it would cause turmoil and disruption at a critical juncture in the 1992 election and would inject the Commission into the process in a manner that could influence the outcome of the election.

Finally, with regard to the request for immediate compliance action, this Office recommends that the Commission proceed as it would with any other enforcement matter. After the respondents have been given the statutory 15 days to respond to the complaint or have actually responded to it, this Office will prepare a report to the Commission making appropriate recommendations.

#### RECOMMENDATIONS

1. Decline at this time to seek injunctive relief against the Feinstein for Senate Committee and Michael J. Barrett, as treasurer, and the Democratic Senatorial Campaign Committee and Thomas J. Lehner, as treasurer.

2. Approve the appropriate letters.

Staff assigned: Mary P. Mastrobattista



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

MEMORANDUM

TO: LAWRENCE NOBLE  
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS /DONNA ROACH *DR*  
COMMISSION SECRETARY

DATE: OCTOBER 26, 1992

SUBJECT: MUR 3617 - GENERAL COUNSEL'S MEMORANDUM  
DATED OCTOBER 20, 1992

The above-captioned document was circulated to the  
Commission on WEDNESDAY, OCTOBER 21, 1992 at 11:00 A.M.

Objection(s) have been received from the  
Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	_____
Commissioner Elliott	_____
Commissioner McDonald	_____
Commissioner McGarry	_____
Commissioner Potter	XXX _____
Commissioner Thomas	_____

This matter will be placed on the meeting agenda  
for TUESDAY, NOVEMBER 3, 1992.

Please notify us who will represent your Division before  
the Commission on this matter.

95043690029

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Feinstein for Senate Committee and  
Michael J. Barrett, as treasurer;  
Democratic Senatorial Campaign  
Committee and Thomas J. Lehner, as  
treasurer.

)  
)  
) MUR 3617  
)  
)  
)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on October 27, 1992, the Commission decided by a vote of 6-0 to take the following actions in MUR 3617:

1. Decline at this time to seek injunctive relief against the Feinstein for Senate Committee and Michael J. Barrett, as treasurer, and the Democratic Senatorial Campaign Committee and Thomas J. Lehner, as treasurer.

(continued)

95043690030

2. Approve the appropriate letters, as recommended in the General Counsel's Memorandum dated October 20, 1992.

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

Attest:

10-27-92  
Date

*Delores R. Hardy*  
for Marjorie W. Ennops)  
Secretary of the Commission

Received in the Secretariat:	Tues., Oct. 20, 1992	4:34 p.m.
Circulated to the Commission:	Wed., Oct. 21, 1992	11:00 a.m.
Deadline for vote:	Mon., Oct. 26, 1992	4:00 p.m.
Received Objection:	Mon., Oct. 26, 1992	3:53 p.m.
Placed on Agenda for:	Tues., Nov. 03, 1992	
Objection Withdrawn:	Tues., Oct. 27, 1992	3:37 p.m.
Withdrawn from Agenda		

bjr

95043690031



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 30, 1992

Richard H. McBride, Campaign Manager  
U.S. Senator John Seymour Committee  
150 Paularino Avenue  
Suite 275  
Costa Mesa, CA 92626

RE: MUR 3617

Dear Mr. McBride:


On September 24, 1992, the Federal Election Commission received your amended complaint alleging that the Feinstein for Senate Committee and Michael J. Barrett, as treasurer, and the Democratic Senatorial Campaign Committee and Thomas J. Lehner, as treasurer, violated the Federal Election Campaign Act of 1971, as amended.

Your letter seeks injunctive relief to prevent the Feinstein for Senate Committee and the Democratic Senatorial Campaign Committee from continuing to engage in the allegedly improper activity. At this time there is insufficient evidence to warrant the Commission's seeking such relief. Accordingly, the Commission has decided to deny your request at this juncture. The Commission will notify you at such time when the entire file is closed in this matter.

If you have any questions, please contact Mary P. Mastrobattista, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Lawrence M. Noble  
General Counsel

BY:   
Lois G. Lerner  
Associate General Counsel

95043690032



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 30, 1992

William C. Oldaker, Esq.  
Manatt, Phelps, Phillips & Kantor  
1200 New Hampshire Ave., N.W.  
Suite 200  
Washington, D.C. 20036-6889

RE: MUR 3617  
Feinstein for Senate Committee  
and Michael J. Barrett, as  
treasurer

Dear Mr. Oldaker:


On October 2, 1992, the Federal Election Commission notified you of an amended complaint alleging that Feinstein for Senate Committee and Michael J. Barrett, as treasurer, violated certain sections of the Federal Campaign Act of 1971, as amended. A copy of the amended complaint was forwarded to you at that time.

The complainant seeks injunctive relief to prevent your clients from continuing to engage in allegedly improper activity. At this time there is insufficient evidence to warrant the Commission's seeking such relief. Accordingly, the Commission has decided to deny the complainant's request for injunctive relief at this juncture. The Commission will nonetheless proceed with the processing of the complaint pursuant to 2 U.S.C. § 437g(a).

If you have any further questions, please contact Mary P. Mastrobattista, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Lawrence M. Noble  
General Counsel

BY:   
Lois G. Lerner  
Associate General Counsel

95043690033



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 30, 1992

Robert F. Bauer, Esq.  
Perkins Coie  
607 14th Street, N.W.  
Washington, D.C. 20005-2011

RE: MUR 3617  
Democratic Senatorial Campaign  
Committee and Thomas J. Lehner,  
as treasurer

Dear Mr. Bauer:

On October 2, 1992, the Federal Election Commission notified the Democratic Senatorial Campaign Committee ("DSCC") and Thomas J. Lehner, as treasurer, of an amended complaint alleging that the DSCC and Thomas J. Lerner, as treasurer, violated certain sections of the Federal Campaign Act of 1971, as amended. A copy of the amended complaint was forwarded to your clients at that time.

The complainant seeks injunctive relief to prevent your clients from continuing to engage in allegedly improper activity. At this time there is insufficient evidence to warrant the Commission's seeking such relief. Accordingly, the Commission has decided to deny the complainant's request for injunctive relief at this juncture. The Commission will nonetheless proceed with the processing of the complaint pursuant to 2 U.S.C. § 437g(a).

If you have any further questions, please contact Mary P. Mastrobattista, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Lawrence M. Noble  
General Counsel

BY:   
Lois G. Lerner  
Associate General Counsel

95043690034



06C 6594

# National Republican Senatorial Committee

SENATOR PHIL GRAMM  
CHAIRMAN

JEB HENSARLING  
EXECUTIVE DIRECTOR

September 24, 1992

Mrs. Joan Aikens  
Chairman  
Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20463

MUR 3620

Dear Madam Chairman:

95043690035

This letter constitutes a formal complaint filed under 2 U.S.C. 437g(a) of the Federal Election Campaign Act ("FECA") on behalf of the National Republican Senatorial Committee (the "NRSC"). It is the NRSC's belief, based on information set out below, that the Yeakel for Senate Committee (the "Yeakel Campaign"), the Feinstein for Senate Committee (the "Feinstein Campaign"), the Terry Sanford for U.S. Senate Committee (the "Sanford Campaign") and the Democratic Senatorial Campaign Committee (the "DSCC"), political committees registered with the Federal Election Commission ("the Commission"), have violated FECA and the Commission's regulations.

As the Commission well knows, under the law, all personal contributions that are "earmarked" for a particular candidate are deemed contributions from the contributor to the candidate. 11 C.F.R. 110.6(a). This precludes both the candidate and the contributor from evading the limits FECA imposes on the amount any person may contribute to a federal campaign. Based upon the evidence set out below, the NRSC believes that the Yeakel Campaign, the Feinstein Campaign, the Sanford Campaign and the DSCC have violated these legal provisions.

The DSCC has repeatedly and openly solicited contributions from persons who wish to avoid federal limitations. The Yeakel Campaign, the Feinstein Campaign and the Sanford Campaign have obviously sought to take advantage of the DSCC's solicitations:

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FEDERAL ELECTION COMMISSION  
92 SEP 24 AM 10:36

9 5 0 4 3 6 9 0 0 3 6

1. In the invitation attached at Exhibit 1, the DSCC announced that its "U.S. Senate Campaign Countdown" is "designed for a senate campaign's maxed-out donors and top contributors who are interested in further supporting their candidates through the DSCC's tally system. The DSCC provides donors with the opportunity to tally contributions to the Democratic Senate nominees of their choice." The invitation included a form by which the contributors could "tally" an explicit amount to candidates of their choice.

2. In the memorandum attached at Exhibit 2, the DSCC defined its "tally" option as ensuring that individuals could earmark large contributions to particular candidates and thus evade federal limitations.

3. In the memorandum attached at Exhibit 3, the DSCC encouraged all Senate staff and campaign finance directors "to encourage maxed-out and high dollar contributors to tally \$10,000 or more (per couple) in new money to their preferred Democratic Senate candidate(s)."

4. In the document attached at Exhibit 4, Senate candidate Dianne Feinstein, acting on the encouragement of the DSCC, asked her contributors to evade federal limitations through "the DSCC tally."

5. In the document attached at Exhibit 5, Senate candidate Terry Sanford, also encouraged by the DSCC, asked his contributors to evade federal limits through the "tally sheet."

6. In the invitation attached at Exhibit 6, Norman Braman asks contributors to honor "Lynn Yeakel, Candidate for United States Senate," with a \$5,000 contribution made payable to the DSCC.

These documents show that the Yeakel Campaign, the Feinstein Campaign, and the Sanford Campaign are engaging in a common scheme or design to circumvent and violate federal law when it comes to raising campaign contributions. The Yeakel Campaign's current active solicitation of large contributions and the DSCC's plan to target "maxed-out" donors, combined with the DSCC's pledge to "tally" contributions to favored candidates and the DSCC's long-standing promise to make a Yeakel victory a national priority, virtually ensure that the DSCC intends to continue its scheme and to "honor" Lynn Yeakel by "tallying" contributions raised at the upcoming Braman fundraiser.

The NRSC believes that this attempt to launder contributions and evade the law must be condemned. Accordingly, I ask that the Commission's Office of General Counsel expeditiously review this complaint and take appropriate action with regard to these apparent violations of the FECA.

The above is true and correct to the best of my knowledge, information and belief.

Respectfully,



Jay Velasquez  
on behalf of the  
National Republican Senatorial Committee

National Republican Senatorial Committee

Sworn to and subscribed

before me this 24 day  
of Sept, 1992

  
Notary Public

Lana R. Galt  
Notary Public, District of Columbia  
My Commission Expires July 14, 1997

95043690037

EXHIBIT 1

92 SEP 24 PM 1:51

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FBI  
SEP 24 1992

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Democratic Senatorial Campaign Committee  
cordially invites you to attend a special program

## U.S. Senate Campaign Countdown

Wednesday & Thursday, September 9 & 10  
Washington, D.C.

including

Cocktails at the home of Senator & Mrs. Edward M. Kennedy  
Dinner at the home of Senator & Mrs. Charles S. Robb  
Breakfast at the home of Senator & Mrs. John D. Rockefeller

You are invited to join the Democratic Senatorial Campaign Committee for this special conference designed to provide strategic information on the 1992 U.S. Senate campaigns followed by a special program of cocktails, dinner and breakfast at the private homes of Senators Kennedy, Robb and Rockefeller.

The Campaign Countdown will highlight the 1992 Senate races and will offer donors a comprehensive, inside look at campaign strategies, media clips, polling, fundraising and USCC tally opportunities. The discussion will be led by nationally recognized political strategists, pollsters, consultants and guest speakers.

### DSCC Campaign Countdown

#### Wednesday, September 9

3:30 - 5:30 pm Campaign Countdown, DSCC Headquarters, 430 S. Capitol St. SE  
6:30 - 8:00 pm Cocktails at the home of Senator & Mrs. Edward M. Kennedy  
8:00 - 10:00 pm Dinner at the home of Senator & Mrs. Charles S. Robb

#### Thursday, September 10

8:30 am - 10:00 am Breakfast at the home of Senator & Mrs. John D. Rockefeller

The Campaign Countdown is designed for a Senate campaign's max-out donors and top contributors who are interested in further supporting their candidates through the DSCC's tally system. The DSCC provides donors with the opportunity to tally their contributions to the Democratic Senate nominees of their choice. The program is designed for donors who would like to tally \$10,000 or more in new money to their preferred Senate candidate(s) and who would like to join one of the DSCC's elite donor programs.

Transportation will be provided to and from events. RSVP form enclosed. For information and hotel suggestions, please contact Stephanie Cooper at the DSCC at (202) 224-2447.

Paid for & authorized by the Democratic Senatorial Campaign Committee. Contributions are not refundable.

95043690029



**Democratic Senatorial Campaign Committee**  
430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-3447

**DEMOCRATIC SENATORIAL  
CAMPAIGN COMMITTEE**

**U.S. SENATE CAMPAIGN COUNTDOWN**  
September 9 & 10  
Washington, D.C.

Chairman  
Charles E. Schumer, NY  
Vice Chairman  
George Mitchell, ME  
President  
John D. Rockefeller IV, WV  
National Finance Council  
Barack Obama, NY  
Nancy Pelosi, CA  
Bob Dole, KS  
Leadership Circle  
David Pryor, AR  
National Roundtable  
Paul Ryan, R  
House Counsel  
Pat Cavanaugh  
Lloyd Bentsen, TX  
Joseph Biden, DE  
Bill Bradley, NJ  
Joni Ernst, IA  
Al Franken, MN  
Vicki Hartz, ND  
Christopher Dodd, CT  
Wally Ponder, GA  
Al Franken, MN  
Susan Collins, ME  
Susan Schwabach, LA  
Edward Kennedy, MA  
Robert Kennedy, NY  
John Kerry, MA  
Richard Lugar, IN  
Frank Lautenberg, NJ  
Joseph Lieberman, CT  
Edward Markey, MA  
Susan M. Collins, ME  
Bob Dole, KS  
Donald Rumsfeld, IL  
Jim Cooper, NC  
Paul Wellstone, MN

I/We will attend the Campaign Countdown,  
dinner & breakfast.

Name \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Business Tel: \_\_\_\_\_

Fax \_\_\_\_\_

Home Tel: \_\_\_\_\_

I am interested in the following candidates/campaigns:

I /We are interested in tallying \$ \_\_\_\_\_ toward

\_\_\_\_\_ candidate's campaign and learning

more about the DSCC's elite donor programs

When will you be arriving in Washington? \_\_\_\_\_

Where will you be staying in Washington? \_\_\_\_\_

Please FAX this RSVP to Stephanie Cooper @ (202) 485-  
3120 or call (202) 224-2447 for questions.

Form for use submitted by the Democratic Senatorial Campaign Committee • Check boxes and fill in appropriate

95043690040



95043690041

EXHIBIT 2



**The Democratic Senatorial Campaign  
Committee  
THE TALLY OPTION**

Pol Committee  
 Lloyd Brown, TX  
 Robert Nelson, ME  
 Bill Bradley, RI  
 John Brown, LA  
 Albi Crenshaw, CA  
 Thomas Donahue, SC  
 Christopher Dodd, CT  
 William Proxmire, CO  
 Albert Gore, TN  
 Donald Rumsfeld, IL  
 Robert Bennett, MA  
 Edward Kennedy, MA  
 Robert Hare, RI  
 John B. Hall, NJ  
 Mark Baker, WI  
 Frank Lautenberg, NJ  
 Joseph Lieberman, CT  
 Margaret Mervin, OH  
 Bruce Mikoyan, MD  
 Bill Nunn, GA  
 Donald Rumsfeld, IL  
 Joe Wilson, VA  
 Pat Williams, VA

## WHAT NOW FOR THE RACE FLAVOR

Funding Democratic Senate Races:

The primary function of the Democratic Senatorial Campaign Committee is to provide funding for Democratic Senate candidates in their quest for the U.S. Senate. The Finance Staff of the DSCC raises funds which are allocated to targeted Democratic Senate races based on the campaign's need and winability. These funds provide business with an invaluable source of additional funding which helps them keep their competitive edge. The DSCC accepts PAC and individual contributions through a variety of means and donor categories; it cannot accept noncorporate funds.

WILL GOVERN TO THE BEST

Under FEC regulations, an individual may contribute a maximum of \$2000 to a Senate candidate. (\$1000 in the primary and another \$1000 to a general campaign fund). However, an individual may contribute up to \$20,000 annually to a political party organization like the DCCC. PAC's may contribute a maximum of \$15,000 annually to the DCCC. The Committee in turn allocates those funds to Democratic Senate candidates who are up for election in the current cycle. An individual (or PAC) is able to make the maximum legal contribution to assist Democratic Senate candidates financially by contributing to the DCCC.

### WHAT DOES "GALTY" MEAN?

When contributing to the BSCC, a donor may request that his or her contribution be "allotted" to the Democratic Senate candidate(s) of their choice. This is a way for a donor to indicate their candidate preference(s) on how they would like their BSCC contribution distributed. Financial support to Senate candidates is determined by the Senators who comprise the Allocation Committee of the BSCC. A candidate's "allotted" contributions are a key criterion considered in the Committee's allocation decisions.

HOW DO I FEEL THE DECK AS I GO "TALL"?

The DSCC has many donor categories and levels of participation for PAC's and individuals with corresponding benefits for each donor group. All contributions to the DSCC at any donor level may be tallied to specific candidates by the donor.

EXHIBIT 3

95043690043



**Democratic Senatorial Campaign Committee**  
430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447

August 13, 1992

TO: SENATE RA'S & CAMPAIGN FINANCE DIRECTORS

FROM: STEVE RICCHETTI

RE: SPECIAL DSCC CAMPAIGN UPDATE & HI-DOLLAR  
TALLY PROGRAM W/SENATE COCKTAILS, DINNER &  
BREAKFAST SEPTEMBER 9 & 10

Please join the DSCC for a special program that  
will be of great benefit to your Senate campaign.

The program is designed for high dollar & max-out  
contributors to 1992 Senate campaigns.

On Wednesday afternoon September 9, the DSCC will  
host a campaign conference covering the latest  
information on the 1992 Senate races. Guest  
speakers will conduct the sessions.

That evening, donors and contributors will be  
invited to a special evening of cocktails at the  
McLean home of Senator & Mrs. Ted Kennedy (6:10 -  
8:00 pm) followed by dinner at the home of Senator  
& Mrs. Charles S. Robb. The following morning,  
guests will be invited to breakfast at the home of  
Senator & Mrs. Jay Rockefeller.

The program is specifically designed to encourage  
max-out and high-dollar contributors to tally  
\$10,000 or more (per couple) in new money to their  
preferred Democratic Senate candidate(s).

This is an ideal opportunity for you to cultivate  
your high dollar prospects and encourage them to  
support their candidate(s) through the DSCC's  
tally system.

I encourage you to invite your donors to this  
special series of events. Please call Stephanie  
Cooper if you need additional information at (202)  
224-2447. Due to space limitations, please RSVP no  
later than September 1, 1992.

Chairman  
Charles S. Robb, VA

Deputy  
George Mitchell, ME

Program Chairman  
John D. Rockefeller IV, WV  
National Program Council

Richard Bryan, NV  
Minority Team

Don Graham, FL  
Leadership Circle

Steve Ryan, AL  
Executive Committee

Paul Simon, IL  
Labor Council

Full Committee  
Lloyd Bentsen, TX  
Joseph Biden, DE  
Bill Bradley, NJ  
John Chafee, RI  
Alan Cranston, CA  
Thomas Daschle, KS  
Christopher Dodd, CT  
Walter Funder, GA  
Robert Gable, TN  
Brent Gandy, MD  
Edward Kennedy, MA  
Robert Kennedy, NY  
John Kerry, MA  
Mark Kirk, WI  
Frank Lautenberg, NJ  
Joseph Lieberman, CT  
Howard Mankin, OH  
Bobby Mitchell, MD  
Dan Rosten, GA  
Donald Rumsfeld, MI  
Dan Quayle, IN  
Paul Wellstone, MN

95043690044

EXHIBIT 4

95043690045

Dianne Feinstein  
1121 W. Century Blvd. #10  
Los Angeles, CA 90024  
Tel. (213) 373-1100

1355 U. S. Highway  
Suite 210  
90010

August 9, 1992

Dear \_\_\_\_\_

Please join me and my special guest, United States Senator  
Lloyd Bentsen.

Thursday, August 27th, 7:00 p.m.  
At the home of Lynne Wasserstein  
314 Doheny Road  
Beverly Hills, CA

Senator Bentsen is Chairman of the Senate Finance Committee.  
He is also a member of the Senate Commerce, Science and  
Transportation Committee and the Joint Economic Committee.

He has graciously agreed to help us raise money for my election  
with the Democratic Senatorial Campaign Committee.

The DSCC is a Washington based group set up by U.S. Senators  
in the Democratic Party to help raise money and support for  
Democratic U.S. Senate candidates throughout the country. They can  
accept personal contributions of up to \$25,000 in a calendar year (and  
within an individual's \$25,000 yearly federal contribution limit). Your  
contribution to the DSCC can be credited to the Dianne Feinstein  
account.

I hope you will consider a contribution of at least \$1,000 per  
person to the DSCC. John Seymour will receive the maximum of \$2.5  
million from the Republican Senatorial Campaign Committee. I am  
hopeful that this evening will be a major fundraising event.

For those of you who have already mailed out to my campaign,  
the DSCC solely is an avenue through which you can offer more  
support. For further information regarding your donation to my DSCC  
account or my campaign, please call Teresa Ruffenbush at (310) 514-  
0663.

I look forward to seeing you on the 27th.

Warmest regards,

Dianne  
Feinstein

95043690046



Exhibit 5

95043690047

**TERRY SANFORD'S CAMPAIGN FOR U.S. SENATE**  
and the  
**Democratic Senatorial Campaign Committee**

The Democratic Senatorial Campaign Committee (DSCC) works to elect Democratic Senators across the country. One of their tools is financial. The DSCC may accept money above and beyond what a candidate raises. If you have given your personal maximum to a candidate, you may still give additional monies to the DSCC. Individuals may give a total of \$20,000 to the DSCC; Political Action Committees may give up to \$15,000. If specified, such contributions may be "tallied" to Terry Sanford's DSCC tally sheet.

The DSCC will help the Sanford campaign according to need, winability, and our tally sheet total. Terry Sanford's race will be close the tally sheet will be of vital importance.

In addition to helping Terry Sanford, DSCC contributions offer further benefits, according to the level of contribution.

**The Majority Trust - \$20,000**

*The Majority Trust reflects the highest level of support for the DSCC. Benefits include participation in all DSCC donor program events sponsored by the Leadership Circle and the Business Roundtable, as well as events planned exclusively for Majority Trust members. Past programs have included retreats in Aspen, Newport, Rhode Island, and Florida. The retreats feature guests including Majority Leader George Mitchell, Chairman Chuck Robb, Senator Lloyd Benisen and others.*

**The Leadership Circle - \$15,000**

*The Leadership Circle provides an opportunity for major contributors and Democratic Senators and candidates to exchange resources and ideas. Leadership Circle benefits include special weekends centered around the Superbowl and the Kentucky Derby, as well as a table at the Annual Congressional Dinner and a variety of regional events. Some of the past Leadership Circle events include: a dinner at the home of Senator and Mrs. John D. Rockefeller IV, a reception at the home of Mrs. Pamela Harriman, a cocktail reception on Capitol Hill for Majority Leader George Mitchell, and a spring dinner/dance at the Ritz-Carlton.*

**The Business Roundtable-\$5,000**

*The Business Roundtable brings Senators together with business leaders interested in politics and public policy. The Business Roundtable hosts six meetings a year in Washington and several regional meetings. It includes a complimentary invitation to the annual Fall Dinner. Participants have included Majority Leader George Mitchell, Senator Sam Nunn, and Senator Lloyd Benisen.*

Electing a Democratic majority in the Senate is vital business. Terry Sanford needs to be in that majority. To help him, and to help the DSCC, please make your check to DSCC, and note on it "Sanford Tally Sheet". Then mail your check to Sanford for Senate, P.O. Box 30787, Raleigh, N.C. 27622-0787, or to the DSCC office in Washington.

95043690048

Exhibit 6

95043690049

9 5 0 4 3 6 9 0 0 5 0

Norman and Irma Droman  
request the pleasure of your company  
at a dinner honoring

Lynn Yeakel  
Candidate for United States Senate

followed by  
The Philadelphia Eagles vs The Dallas Cowboys

Monday evening, the fifth of October  
nineteen hundred and ninety-two

seven o'clock Dinner  
nine o'clock Kickoff

Veterans Stadium  
Philadelphia, Pennsylvania

Contribution \$50.00

D.S.V.D. (215) 772 1633

Checks payable to: Democratic Senatorial Campaign Committee

Subsidiary of the Democratic National Campaign Committee

☐ Yes, I/we will attend the Eagles vs. Cowboys Monday Night Football on  
October 5. Enclosed is my check for \$\_\_\_\_\_

☐ No, I/we will not attend, but enclosed is my contribution of \$\_\_\_\_\_

Please make checks payable to: Democratic Senatorial Campaign Committee  
Deliver in the enclosed envelope to 430 South Capitol Street, S.E., Washington, D.C. 20003  
Federal law requires that you provide the following information:

Name \_\_\_\_\_

Home Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Occupation \_\_\_\_\_ Employer \_\_\_\_\_

Business Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Home Phone \_\_\_\_\_ Business Phone \_\_\_\_\_

Not on this list? If so, please attach your own signature card.  
Contributions to this committee are subject to Federal campaign contribution law and regulations.

Democratic Senatorial Campaign Committee  
430 South Capitol Street, S.E.  
Washington, D.C. 20003  
Attention: Margaret Cherry



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 29, 1992

Mr. Jay Velasquez  
National Republican Senatorial Committee  
425 Second Street, N.E.  
Washington, D.C. 20002

RE: MUR 3620

Dear Mr. Velasquez:

This letter acknowledges receipt on September 24, 1992, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Lynn Yeakel for Senate; Feinstein for Senate; Terry Sanford for U.S. Senate and the Democratic Senatorial Campaign Committee. 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 3620. 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.

Sincerely,

A handwritten signature in cursive script, reading "Teresa A. Hennessy", is positioned above the typed name.

Teresa Hennessy  
Assistant General Counsel

Enclosure  
Procedures

95043690051



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 29, 1992

Michael J. Barrett  
Feinstein for Senate Committee  
909 Montgomery Street  
Suite 202  
San Francisco, CA 94133

RE: MUR 3620

Dear Mr. Barrett:

The Federal Election Commission received a complaint which indicates that the Feinstein for Senate Committee 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 3620. 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.


95043690052



Michael J. Barrett, Treasurer  
Feinstein for Senate Committee  
Page 2

If you have any questions, please contact Mary P. Mastrobattista, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Teresa Hennessy  
Assistant General Counsel

Enclosures

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

CC: The Honorable Dianne Feinstein

95043690053



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Sidney D. Rosenblatt, Treasurer  
Lynn Yeakel for Senate  
304 C Lombard Street  
Philadelphia, PA 19147

RE: MUR 3620

Dear Mr. Rosenblatt:

The Federal Election Commission received a complaint which indicates that Lynn Yeakel 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 3620. 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.

95043690054

Sidney D. Rosenblatt, Treasurer  
Lynn Yeakel for Senate  
Page 2

If you have any questions, please contact Mary P. Mastrobattista, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Teresa Hennessy  
Assistant General Counsel

Enclosures

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

CC: Lynn Yeakel

95043690055



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 29, 1992

Thomas J. Lehner, Treasurer  
Democratic Senatorial Campaign Committee  
430 South Capitol Street, S.E.  
Washington, D.C. 20003

RE: MUR 3620

Dear Mr. Lehner:

The Federal Election Commission received a complaint which indicates that the Democratic Senatorial Campaign Committee 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 3620. 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.

9504369006

Page 2

If you have any questions, please contact Mary P. Mastrobattista, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Teresa Hennessy  
Assistant General Counsel

Enclosures

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

95043690057



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

September 29, 1992

Alton C. Buck, Treasurer  
Terry Sanford for U.S. Senate  
P.O. Box 1178  
Fayetteville, N.C. 28302

RE: MUR 3620

Dear Mr. Buck:

The Federal Election Commission received a complaint which indicates that Terry Sanford for U.S. 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 3620. 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.

95043690053

Alton G. Buck, Treasurer  
Terry Sanford for U.S. Senate  
Page 2

If you have any questions, please contact Mary P. Mastrobattista, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

*Teresa A. Hennessy*

Teresa Hennessy  
Assistant General Counsel

Enclosures

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

CC: The Honorable James Terry Sanford

95043690059



OGC 6806

# PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011 • (202) 628-6600

October 7, 1992

Mary P. Mastrobattista  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

**Re: MURs 3617 and 3620 - Democratic Senatorial  
Campaign Committee**

Dear Ms. Mastrobattista:

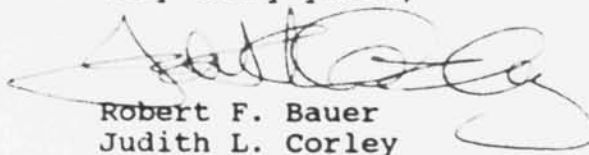
Enclosed are designations of counsel for the above-referenced Matters Under Review.

With the election less than one month away, and the need to coordinate our response with several campaigns involved in highly contested races, we anticipate more than the usual difficulty in obtaining necessary information and time from staff that is required to prepare a response. We would like, therefore, to request that the two matters be consolidated into one MUR and that an extension of time of 20 days be granted to respond to both matters. The complaints address an identical issues and, in the case of Dianne Feinstein, even involve the same candidate. A single consolidated response with a single response date would seem logical.

As a result of the additional information submitted in MUR 3617, which we received on October 5, 1992, the original 15-day response would have been due on October 20. With the 20-day extension, a response would be due on November 9, 1992.

If you have any questions or need additional information, please contact one of the undersigned.

Very truly yours,



Robert F. Bauer  
Judith L. Corley  
Counsel to Respondent

92 OCT -7 AM 9:50

[04005-0001/DA922810.001]

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3617

NAME OF COUNSEL: Robert F. Bauer and Judith L. Corley, Perkins Coie

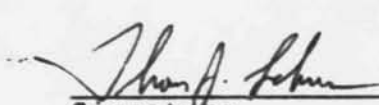
ADDRESS: 607 14th Street, NW, Suite 800

Washington, DC 20005

TELEPHONE: ( 202 ) 628-6600

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.

10/5/92  
Date

  
Signature

RESPONDENT'S NAME: Democratic Senatorial Campaign Committee

ADDRESS: 430 South Capitol Street, SE

Washington, DC 20003

TELEPHONE: HOME (        )                     

BUSINESS ( 202 ) 224-2447

95043690061

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3620

NAME OF COUNSEL: Robert F. Bauer and Judith L. Corley, Perkins Coie

ADDRESS: 607 14th Street, NW, Suite 800

Washington, DC 20005

TELEPHONE: ( 202 ) 628-6600

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.

10/5/92  
Date

  
Signature

RESPONDENT'S NAME: Democratic Senatorial Campaign Committee

ADDRESS: 430 South Capitol Street, SE

Washington, DC 20003

TELEPHONE: HOME(        )                     

BUSINESS( 202 ) 224-2447

95043690062



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20543

October 14, 1992

Robert F. Bauer, Esq.  
Perkins Coie  
607 14th Street, N.W.  
Washington, D.C. 20005-2011

RE: MURs 3617 and 3620  
Democratic Senatorial Campaign  
Committee and Thomas J. Lehner,  
as treasurer

Dear Mr. Bauer:

This is in response to your letter dated October 7, 1992, which we received that same day requesting an extension until November 9, 1992, to respond to the complaints filed against your clients in MURs 3617 and 3620. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your responses are due by the close of business on November 9, 1992.

Your request that MURs 3617 and 3620 be consolidated into one matter will be presented to the Commission after responses to the complaints have been filed. You will be notified as soon as the Commission makes a determination regarding your request to consolidate MURs 3617 and 3620.

If you have any questions, please contact me at  
(202) 219-3400.

Sincerely,

*Mary P. Mastrobattista*

Mary P. Mastrobattista  
Attorney

95043690063

PHILADELPHIA  
LOS ANGELES  
MIAMI  
LONDON  
FRANKFURT

RECEIVED  
FEDERAL ELECTION COMMISSION  
**MORGAN, LEWIS & BOCKIUS**  
COUNSELORS AT LAW  
2000 ONE LOGAN SQUARE  
PHILADELPHIA, PENNSYLVANIA 19103-6993  
TELEPHONE (215) 963-5000  
FAX (215) 963-5299

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COMMISSION  
MAIL ROOM

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WASHINGTON  
NEW YORK  
HARRISBURG  
SAN DIEGO  
BRUSSELS  
TOKYO

GREGORY M. HARVEY  
DIAL DIRECT (215) 963-5427

October 14, 1992

**VIA FACSIMILE TO (202) 219-3923**  
**AND EXPRESS MAIL**

Federal Election Commission  
999 "E" Street, N.W.  
Washington, DC 20463

Attention: Mary P. Mastrobattista, Esquire

Re: MUR 3620

Dear Ms. Mastrobattista:

On behalf of the Lynn Yeakel for Senate Committee and Sidney D. Rosenblatt, Treasurer, we respectfully request an extension of time to respond to the complaint transmitted with Teresa Hennessy's letter dated September 29, 1992, and further request that such extension be for the same time period as is granted to the Democratic Senatorial Campaign in Committee the same matter pursuant to the request made by its counsel.

We have also requested an additional copy of the procedures and designation of counsel statement, which we have been unable to locate among the original papers received by our clients. This will acknowledge receipt of a faxed copy of the designation of counsel statement, which we will circulate for signature and submit under separate cover.

Very truly yours,

*Gregory M. Harvey*  
Gregory M. Harvey

GMH:pg



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 21, 1992

Gregory M. Harvey, Esq.  
Morgan, Lewis & Bockius  
2000 One Logan Square  
Philadelphia, PA 19103-6993

RE: MUR 3620  
Lynn Yeakel for Senate  
and Sidney D. Rosenblatt,  
as treasurer

Dear Mr. Harvey:

This is in response to your letters dated October 14, 1992 and October 19, 1992, requesting an extension until November 9, 1992, to respond to the complaint filed against your clients in this matter. After considering the circumstances presented in your letters, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on November 9, 1992.

Also, please find enclosed a copy of the procedures and designation of counsel statement which were inadvertently omitted from the complaint notification sent to your clients on September 29, 1992. If you have any questions, please contact me at (202) 219-3400.

Sincerely,

*Mary P. Mastrobattista*

Mary P. Mastrobattista  
Attorney

Enclosures

9504369005

OGC 6962

MANATT, PHELPS, PHILLIPS & KANTOR

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

1200 NEW HAMPSHIRE AVENUE, N.W.

SUITE 200

WASHINGTON, D.C. 20036-6889

TELEPHONE (202) 463-4300

FAX (202) 463-4394

(202) 463-4395

LOS ANGELES  
1355 WEST OLIVE STREET  
LOS ANGELES, CALIFORNIA 90064-1544  
(202) 20-4000  
RECEIVED  
OCT 16 PM 4:53  
FEDERAL ELECTION COMMISSION

October 16, 1992

Lawrence M. Noble, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: MUR 3620

Dear Mr. Noble:

This letter requests an extension of time until November 10, 1992 to respond to the complaint in the above-referenced matter under review. The additional amount of time is necessary because of previously scheduled absences of counsel as well as scheduling conflicts with persons who have material information on this matter.

For these reasons, we request an extension of 20 days, setting the new deadline on November 10, 1992. Thank you for your consideration of this request.

Sincerely,

  
William C. Oldaker

95043690066





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 21, 1992

William C. Oldaker, Esq.  
Manatt, Phelps, Phillips & Kantor  
1200 New Hampshire Ave., N.W.  
Suite 200  
Washington, D.C. 20036-6889

RE: MUR 3620  
Feinstein for Senate Committee  
and Michael J. Barrett, as  
treasurer

Dear Mr. Oldaker:

This is in response to your letter dated October 16, 1992, which we received that same day requesting an extension of twenty days to respond to the complaint filed against your clients in this 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 November 10, 1992.

If you have any questions, please contact me at  
(202) 219-3400.

Sincerely,

*Mary P. Mastrobattista*

Mary P. Mastrobattista  
Attorney

95043690067

PHILADELPHIA  
LOS ANGELES  
MIAMI  
LONDON  
FRANKFURT

**MORGAN, LEWIS & BOCKIUS**

COUNSELORS AT LAW  
2000 ONE LOGAN SQUARE  
PHILADELPHIA, PENNSYLVANIA 19103-6993  
TELEPHONE (215) 963-5000  
FAX (215) 963-5299

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NEW YORK  
HARRISBURG  
SAN DIEGO  
BRUSSELS  
TOKYO

GREGORY M. HARVEY  
DIAL DIRECT (215) 963-5427

October 19, 1992

**VIA FACSIMILE TO (202) 219-3923**  
**AND EXPRESS MAIL**

Federal Election Commission  
999 "E" Street, N.W.  
Washington, DC 20463

Attention: Mary P. Mastrobattista, Esquire

Re: MUR 3620

Dear Ms. Mastrobattista:

Supplementing our prior letter requesting an extension of time, the extension which we request is to November 9, 1992. We are making this request because the principal focus of the Complaint is a program administered by the Democratic Senate Campaign Committee ("DSCC") and we anticipate that the preparation of the substantive legal analysis in respect of the response will be provided by counsel for the DSCC. The Yeakel for Senate Committee intends to coordinate its response with the DSCC response and can only do so if granted a commensurate extension of time.

We also understand that another of the candidate committees, similarly situated to the Yeakel Committee as being named in the Complaint as a beneficiary of the DSCC program which is the principal focus of the Complaint, has a request for an extension pending also to November 9.

Respectfully yours,

*Gregory M. Harvey*  
Gregory M. Harvey

GMH:pg

92 OCT 20 PM 3:26

95043690000

MANATT, PHELPS, PHILLIPS & KANTOR

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

1200 NEW HAMPSHIRE AVENUE, N.W.

SUITE 200

WASHINGTON, D.C. 20036-6869

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COMMISSION  
MAIN COPY ROOM

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LOS ANGELES

1285 WEST OLYMPIC BOULEVARD  
LOS ANGELES, CALIFORNIA 90064-1844  
(213) 382-4000

TELEPHONE (202) 463-4300  
FAX (202) 463-4394  
(202) 463-4395

October 20, 1992

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

Re: MURs 3620 and 3617

Dear Mr. Noble:

Enclosed please find designation of counsel forms for respondents Dianne Feinstein and Feinstein for U.S. Senate in the above-referenced matters under review.

Sincerely,

*Lyn Utrecht*

Lyn Utrecht

Enclosures

92 OCT 21 PM 3:16

9504369069

STATEMENT OF DESIGNATION OF COUNSEL

MUR: 3620

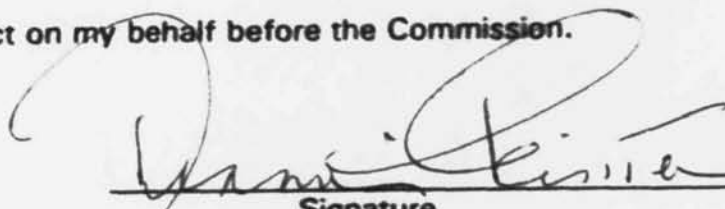
NAME OF COUNSEL: William C. Oldaker, Lyn Utrecht, and  
Ronald B. Turovsky of MANATT, PHELPS,  
PHILLIPS & KANTOR

ADDRESS: 11355 W Olympic Boulevard  
Los Angeles, California 90064

TELEPHONE: (310) 312-4000

The above-named individual/individuals is/are 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.

October 16, 1992  
Date

  
Signature

RESPONDENT'S NAME: Feinstein for Senate Committee

ADDRESS: 11355 W Olympic Boulevard, Suite 500  
Los Angeles, California 90064

BUSINESS PHONE: (310) 914-0660

92 OCT 21 PM 3:16

950436924000

STATEMENT OF DESIGNATION OF COUNSEL

MUR: 3620

NAME OF COUNSEL: William C. Oldaker, Lyn Utrecht, and  
Ronald B. Turovsky of MANATT, PHELPS, PHELPS &  
KANTOR

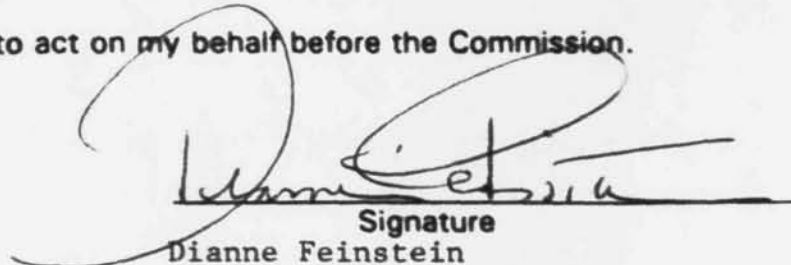
ADDRESS: 11355 W. Olympic Blvd.

Los Angeles, California 90064

TELEPHONE: (310) 312-4000

The above-named individual/individuals is/are 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.

October 16, 1992  
Date

  
Signature  
Dianne Feinstein

RESPONDENT'S NAME: Dianne Feinstein

ADDRESS: Feinstein for U.S. Senate

11355 West Olympic Boulevard, Suite 500

Los Angeles, California 90064

BUSINESS PHONE: (310) 914-0660

950436900/1  
OCT 21 PM 3:16

STATEMENT OF DESIGNATION OF COUNSEL

MUR: 3617

NAME OF COUNSEL: William C. Oldaker, Lyn Utrecht, and  
Ronald B. Turovsky of MANATT, PHELPS,  
PHILLIPS & KANTOR

ADDRESS: 11355 W Olympic Boulevard  
Los Angeles, California 90064

TELEPHONE: (310) 312-4000

The above-named individual/individuals is/are 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.

October 16, 1992  
Date

  
Signature

RESPONDENT'S NAME: Feinstein for Senate Committee

ADDRESS: 11355 W Olympic Boulevard, Suite 500  
Los Angeles, California 90064

BUSINESS PHONE: (310) 914-0660

92 OCT 21 PM 3:16

95043690012

STATEMENT OF DESIGNATION OF COUNSEL

MUR: 3617

NAME OF COUNSEL: William C. Oldaker, Lyn Utrecht, and  
Ronald B. Turovsky of MANATT, PHELPS, PHILLIPS &  
KANTOR

ADDRESS: 11355 W. Olympic Blvd.

Los Angeles, California 90064

TELEPHONE: (310) 312-4000

The above-named individual/individuals is/are 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.

October 16, 1992  
Date

  
Signature  
Dianne Feinstein

RESPONDENT'S NAME: Dianne Feinstein

ADDRESS: Feinstein for U.S. Senate  
11355 West Olympic Boulevard, Suite 500  
Los Angeles, California 90064

BUSINESS PHONE: (310) 914-0660

92 OCT 21 PM 3:16

RECEIVED  
FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE

950436900/3



PHILADELPHIA  
LOS ANGELES  
MIAMI  
LONDON  
FRANKFURT

**MORGAN, LEWIS & BOCKIUS**

COUNSELORS AT LAW  
2000 ONE LOGAN SQUARE  
PHILADELPHIA, PENNSYLVANIA 19103-6993  
TELEPHONE (215) 963-5000  
FAX (215) 963-5299

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COMMISSION  
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HARRISBURG  
SAN DIEGO  
BRUSSELS  
TOKYO

GREGORY M HARVEY  
DIAL DIRECT (215) 963-5427

October 21, 1992

**VIA FACSIMILE TO (202) 219-3923**  
**AND EXPRESS MAIL**

Federal Election Commission  
999 "E" Street, N.W.  
Washington, DC 20463

Attention: Mary P. Mastrobattista, Esquire

Re: MUR 3620

Dear Ms. Mastrobattista:

Submitted herewith is Statement of Designation of Counsel signed by Sidney D. Rosenblatt, Treasurer, Lynn Yeakel for Senate. Pursuant to a change of address submitted recently, the new address of Respondent has been inserted in the Statement. We regret the inconvenience that this Statement was not able to be submitted contemporaneously with our earlier correspondence seeking an extension of time.

Respectfully yours,

  
Gregory M. Harvey

GMH:pg  
enclosure

92 OCT 22 PM 3:42

**STATEMENT OF DESIGNATION OF COUNSEL**

**NUR** 3620

**NAME OF COUNSEL:** GREGORY M. HARVEY


**ADDRESS:** MORGAN, LEWIS & BOCKIUS  
2000 ONE LOGAN SQUARE  
PHILADELPHIA, PA 19103-6993

**TELEPHONE:** 215-963-5427

**FAX:** 215-963-5299

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.

10/24/92  
**Date**

  
**Signature** SIDNEY D. ROSENBLATT

**RESPONDENT'S NAME:**

SIDNEY D. ROSENBLATT, TREASURER  
LYNN YEAKEL FOR SENATE

**ADDRESS:**

~~304 E LOMBARD STREET~~  
~~PHILADELPHIA, PA 19147~~

1314 Chestnut ST  
Phila PA 19107 *SR*

**HOME PHONE:**

**BUSINESS PHONE:**

215-229-4990

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95043690075

DAVID F. KIRBY  
JOHN R. WALLACE \*  
PAUL P. CREECH  
PETER J. SARDA  
ROBERT E. ZAYTOUN \*  
RICHARD P. NORDAN  
RICHARD T. FOUNTAIN, III  
CHERYL M. SWART  
PATRICIA L. WILSON  
\*ALSO ADMITTED IN FLORIDA

KIRBY, WALLACE, CREECH,

SARDA & ZAYTOUN

ATTORNEYS AT LAW

UCB PLAZA

3606 GLENWOOD AVENUE, SUITE 300  
RALEIGH, NORTH CAROLINA 27605

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COMMISSION  
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OCT 26 10 38 AM '92

MAILING:  
P.O. BOX 12065  
RALEIGH, N.C. 27605  
(919) 782-9322

October 21, 1992

FAX:  
(919) 782-9323

VIA FACSIMILE  
ORIGINAL VIA U.S. MAIL

Mary P. Mastrobattista, Esq.  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

RE: MUR 3620  
Terry Sanford for United States Senate  
and Alton G. Buck, as treasurer

Dear Ms. Mastrobattista:

Pursuant to our prior conversations, I write with respect to the foregoing MUR to request an extension of time in which to respond to the Complaint initiating this matter.

In this regard, I enclose a Statement of Designation of Counsel executed by Alton G. Buck, treasurer of the Committee. This copy of a facsimile received in our offices will be supplemented by an executed original upon its receipt here.

Please note that my street address listed on the Statement should read Glenwood Avenue; however, it may be preferable to direct mail to:

Post Office Box 12065  
Raleigh, NC 27605

I am advised by Mr. Buck that the Complaint was received by him on October 14, 1992. As I have indicated, we wish to request an extension of time and understand that, in practice, such extensions are granted for a period of 20 days. Therefore, by our calculation, our response would be due Wednesday, November 18, 1992. We, nevertheless, hope to have our response provided to you on or before November 13, 1992.

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Mary P. Mastrobattista, Esq.  
October 21, 1992  
Page Two

Thank you for your kind assistance in this regard.

With best regards, I remain.

Sincerely,

KIRBY WALLACE CREECH,  
SARDA ZAYTUN

  
John R. Wallace

JRW/pgj  
Enclosure  
cc: Mr. Alton G. Buck  
Mr. David Parker

950436900/7

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3620

NAME OF COUNSEL: John R. Wallace

ADDRESS: UCB Plaza

3605 Greenwood Avenue, Suite 390

Raleigh, NC 27612

TELEPHONE: ( 919 ) 782-9322

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.

10/19/92  
Date

Alton G. Buck  
Signature

RESPONDENT'S NAME: Alton G. Buck

ADDRESS: Box 1178

Fayetteville, NC 28302

TELEPHONE: HOME ( 919 ) 425-4918

BUSINESS ( 919 ) 483-8101

92 OCT 26 PM 4:05

95043690078



FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

October 27, 1992

John R. Wallace, Esq.  
Kirby, Wallace, Creech, Sarda & Zaytoun  
P.O. Box 12065  
Raleigh, NC 27605

RE: MUR 3620  
Terry Sanford for U.S. Senate  
and Alton C. Buck, as treasurer

Dear Mr. Wallace:

This is in response to your letter dated October 21, 1992, which we received on that same day, requesting an extension of twenty days to respond to the complaint filed against Terry Sanford for U.S. Senate and Alton C. Buck, as treasurer. 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 November 18, 1992.

If you have any questions, please contact me at  
(202) 219-3400.

Sincerely,

*Mary P. Mastrobattista*

Mary P. Mastrobattista  
Attorney

95043690079

# National Republican Senatorial Committee

SENATOR PHIL GRAMM  
CHAIRMAN

JEB HENSARLING  
EXECUTIVE DIRECTOR

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October 29, 1992

Teresa A. Hennessy, Esq.  
Assistant to General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

RE: MUR 3620

Dear Ms. Hennessy:

The attached copy of an October 29, 1992 article from The Albany Times Union newspaper is submitted as additional information in MUR 3620.

The article states how certain contributors made contributions to the DSCC with the expectation that the DSCC would "tally" the funds and give those funds to a designated candidate.

The complaint which is the subject of MUR 3620 involved this same scheme of tallying contributions for a clearly identified candidate for federal office. It is reasonable to assume that contributors to the DSCC from Pennsylvania, California, and North Carolina fully understood how the tally scheme was to work as did the New York contributors interviewed by The Albany Times Union.

The above is true and correct to the best of my knowledge, information and belief.

Respectfully,

*Jay Velasquez*  
Jay Velasquez  
Legal Counsel  
on behalf of the NRSC

Sworn to and subscribed  
before me this 29 day of October, 1992.

*Lane C. Guiler*  
Notary Public

Lane C. Guiler  
Notary Public, District of Columbia  
My Commission Expires July 14, 1997

RONALD REAGAN REPUBLICAN CENTER  
425 SECOND STREET, N.E. • WASHINGTON, D.C. 20002 • (202) 675-6000

PAID FOR AND AUTHORIZED BY THE NATIONAL REPUBLICAN SENATORIAL COMMITTEE

92 NOV -2 PM 4:15

95043690030



# Donors acknowledge Abrams got indirect contributions

By Tom Precious  
Capital Bureau

ALBANY — Contributors to Robert Abrams' Senate campaign acknowledged that they gave to a Democratic committee in Washington with the understanding that their money would be funneled back to Abrams, a practice Republicans insist violates federal campaign laws.

The contributors, all of whom had already given Abrams the legal limit of \$1,000 for the general election, donated up to \$20,000 to the Democratic Senatorial Campaign Committee with either the understanding or expectation that their money would then be sent to Abrams. Abrams has spent much of his time trying to raise campaign funds, and had far less cash to spend than his opponent, Sen. Alfonse D'Amato.

**"It was simply a way I could support, more completely, Bob's efforts."**

**Fred Hochberg**  
President of Lillian Vernon company

In two cases, donors said they gave money to the committee upon advice from the Abrams' campaign.

Abrams' fund-raising methods have been "100 percent straightforward, 100 percent legal and 100 percent appropriate," said campaign manager John Burke.

Federal law prohibits a national committee like the Democratic Senatorial Campaign Committee from earmarking funds for a specific candidate using donations from mired-out contributors because that allows them to sidestep the \$1,000 limit. Republicans have filed complaints with the Federal Election Commission against the campaign committee and five Democratic Senate candidates, including Abrams, charging them with violating donating limits in that matter.

"It was simply a way I could support, more completely, Bob's efforts," said Fred Hochberg, president of Lillian Vernon, a Westchester County-based mail order catalog company. Hochberg, already a mired-out Abrams contributor, gave \$4,000 to the campaign committee 14 days after Abrams' Sept. 15 primary win.



Asked why he expected that his contribution would go to Abrams, Hochberg said he was "told that you can give to Abrams and to the (campaign committee) and ask that they can tally that money for a particular candidate."

Hochberg said he was informed of  
Please see ABRAMS A-12

Continued from A-1

## ABRAMS: Donors gave money indirectly

the practice in conversations with representatives of Abrams' campaign and the Democratic National Committee. "They said I could leave it to the (senatorial campaign committee's) discretion or 'tally it.' That's the term they used."

"You simply tell them to tally it for Bob Abrams... or any particular race you want the funds to be used for," Hochberg said.

Another mazed-out Abrams donor, Ronald Stanton, gave the committee \$20,000 — the legal limit — just a week after the September primary. "I gave with the full expectation that the money would go to help (Abrams)," said Stanton, chief executive officer of Transamonia Co., a chemical shipping and trading firm in Manhattan.

Asked how he had that expectation, Stanton said, "Well, I've been involved in other campaigns and that's just the way things seem to work." He said he did not specifically ask the committee to earmark his \$20,000 to Abrams, but it is clear that the committee knows he supports Abrams. "I think it was a given," he said, declining to elaborate.

A third mazed-out Abrams contributor, who spoke on the condition that his name not be used, said he gave to the committee with the specific understanding that his donation would be used to help Abrams.

"I was advised by the Abrams people," the donor said. The committee knew the donor was an Abrams backer because he wrote the check out to the Democratic Senatorial Campaign Committee, then handed it over to the Abrams campaign, which in turn mailed his check and others to the Washington

committee — a procedure Abrams fund-raisers have already acknowledged they use.

It is common for mazed-out contributors to give to a party committee with the possibility that the committee will in turn help the candidate they support. However, a spokesman for the Federal Election Commission said federal law prohibits mazed-out contributors from telling the committee to spend their donation on their candidate.

Under a federal formula, Abrams is eligible for about \$1.5 million in Senate campaign committee money, which can be spent by the committee to pay for such things as advertising and polling. The committee also can give \$17,500 directly to Abrams, and has already done so.

Since the primary, according to federal records, more than \$450,000 was given to the committee by Abrams' deep-pocket backers. The committee, in turn, gave Abrams about \$700,000.

Abrams officials said no "earmarking" of funds was conducted. They said the committee keeps track of a donor's address and preferred candidate but no one can specifically tell the committee how to spend its money. Chief among considerations is how close a race is and whether the Democratic candidate can win, Burke said.

"Of course potential contributors were told a number of ways they could help Bob," Burke said. "Contributors were certainly told the DSCC was keeping a tally and they were going to tally their money. But if a mazed-out contributor says, 'Here's my money, I only want it to go to Abrams and no one else,' the DSCC will return their check. If a

contributor says, 'Here's my check and chalk it up to the tally for the Abrams race,' that's absolutely legal."

Fred Elland, the Federal Election Commission spokesman, would not comment on the legality of the practice. "If someone brings a complaint... then the six commissioners would look at it and make a determination," he said.

Earlier this month, citing a Times Union article that first revealed that the Abrams campaign was trying to persuade mazed-out donors to give to the Senate campaign committee, D'Amato accused Abrams of running "a money-laundering operation."

Other leading Abrams donors said they had no guarantee that their contribution to the committee would end up with Abrams. "I assumed that the (committee) is going to be helpful to all Senate candidates, including Bob. It is my hope and expectation that they will use some of those funds for Bob," said Steven Kumble, chairman of Lincolnshire Management, a Manhattan investment firm, who gave the committee \$7,500 on Sept. 30.

Another Abrams backer, Eileen Welzer of Florham Park, N.J., gave \$2,500 to the committee. When asked why she gave to both, she said, "You'll have to talk to my husband. He is the one that does the contributing."

Both candidates have faced scrutiny for their fund-raising practices. The latest revelations come after D'Amato has already been criticizing Attorney General Abrams for taking donations from lawyers who do business before the attorney general's office.



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 4, 1992

Jay Velasquez, Esq.  
National Republican Senatorial Committee  
425 Second Street, NE  
Washington, D.C. 20002

RE: MURs 3620, 3653 and 3658

Dear Mr. Velasquez:

This letter acknowledges receipt on November 2, 1992, of the supplements to the complaints you filed in MURs 3620, 3653 and 3658. The respondents will be sent copies of the supplements. You will be notified as soon as the Federal Election Commission takes final action on your complaints.

Sincerely,

*Mary P. Mastrobattista*

Mary P. Mastrobattista  
Attorney

95043690033



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 4, 1992

William C. Oldaker, Esq.  
Manatt, Phelps, Phillips & Kantor  
1200 New Hampshire Ave., N.W.  
Suite 200  
Washington, D.C. 20036-6889

RE: MUR 3620  
Feinstein for Senate Committee  
and Michael J. Barrett, as  
treasurer

Dear Mr. Oldaker:

On September 29, 1992, your clients were notified that the Federal Election Commission received a complaint from the National Republican Senatorial Committee alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time your clients were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification. By letter dated October 21, 1992, this Office granted an extension of time to respond to the complaint until November 10, 1992.

On November 2, 1992, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

If you have any questions, please contact me at  
(202) 219-3400.

Sincerely,

*Mary P. Mastrobattista*

Mary P. Mastrobattista  
Attorney

Enclosure

95043690034



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 4, 1992

Gregory M. Harvey, Esq.  
Morgan, Lewis & Bockius  
2000 One Logan Square  
Philadelphia, PA 19103-6993

RE: MUR 3620  
Lynn Yeakel for Senate  
and Sidney D. Rosenblatt,  
as treasurer

Dear Mr. Harvey:

On September 29, 1992, your clients were notified that the Federal Election Commission received a complaint from the National Republican Senatorial Committee alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time your clients were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification. By letter dated October 21, 1992, this Office granted an extension of time to respond to the complaint until November 9, 1992.

On November 2, 1992, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

If you have any questions, please contact me at  
(202) 219-3400.

Sincerely,

*Mary P. Mastrobattista*

Mary P. Mastrobattista  
Attorney

Enclosure

95043690085





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 4, 1992

John R. Wallace, Esq.  
Kirby, Wallace, Creech, Sarda & Zaytoun  
P.O. Box 12065  
Raleigh, NC 27605

RE: MUR 3620  
Terry Sanford for U.S. Senate  
and Alton C. Buck, as treasurer

Dear Mr. Wallace:

On September 29, 1992, your clients were notified that the Federal Election Commission received a complaint from the National Republican Senatorial Committee alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time your clients were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification. By letter dated October 27, 1992, this Office granted an extension of time to respond to the complaint until November 18, 1992.

On November 2, 1992, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

If you have any questions, please contact me at  
(202) 219-3400.

Sincerely,

*Mary P. Mastrobattista*

Mary P. Mastrobattista  
Attorney

Enclosure

95043690086



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 4, 1992

Robert F. Bauer, Esq.  
Perkins Coie  
607 14th Street, N.W.  
Washington, D.C. 20005-2011

RE: MURs 3620, 3653 and 3658  
Democratic Senatorial Campaign  
Committee and Thomas J. Lehner,  
as treasurer

Dear Mr. Bauer:

On September 29, October 21 and October 23, 1992, your clients were notified that the Federal Election Commission received three complaints from the National Republican Senatorial Committee alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. Your clients were given copies of the complaints and informed that responses to the complaints should be submitted within 15 days of receipt of the notifications.

On November 2, 1992, the Commission received additional information from the complainant pertaining to the allegations in the complaints. Enclosed is a copy of this additional information.

If you have any questions, please contact me at  
(202) 219-3400.

Sincerely,

A handwritten signature in cursive script, reading "Mary P. Mastrobattista".

Mary P. Mastrobattista  
Attorney

Enclosure

95043690087



PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011 • (202) 628-6600

November 9, 1992

Mary P. Mastrobattista  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: MURs 3617, 3620, 3653 and 3658 -  
Democratic Senatorial Campaign Committee

Dear Ms. Mastrobattista:

This letter constitutes the response of the Democratic Senatorial Campaign Committee ("DSCC" or "the Committee") to the complaints filed with the Federal Election Commission and identified with the Matter Under Review numbers listed above. This letter responds to the issues raised in each of those MURs.

The complaints allege that the DSCC has violated the federal campaign laws by accepting contributions earmarked for particular candidates which resulted in excessive contributions to those candidates, and by failing to comply with the earmarking regulations of the Federal Election Commission ("FEC"). Based on the following evidence and discussion, it will be clear that the DSCC has not violated the federal campaign laws in any way and that the complaints should be dismissed by the Commission with no further action.

**Background**

The complaints take issue with the DSCC's "Tally Sheet." The Tally Sheet is an informal accounting process established by the DSCC to keep track of the amount of money raised for the Committee's use by a particular candidate. The program is simply and exclusively an information gathering procedure. Each contribution raised for the DSCC by a candidate is "tallied" or credited to that candidate's "tally sheet." The total amount of money raised by a particular candidate for the Committee is then taken into consideration as one of several factors used by the DSCC when it decides on funding decisions under the spending authority provided at 2 U.S.C. § 441a(d).

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Mary P. Mastrobattista  
November 9, 1992  
Page 2

DSCC has an express policy of not accepting earmarked contributions. When a contribution is received by the DSCC with a designation by a contributor which would appear to constitute earmarking, a letter is sent to clarify the contributor's intent. Sample copies of this letter are attached as Exhibit A. As the letter shows, the DSCC offers the opportunity of a refund to each contributor who did not intend to contribute to the tally of a particular candidate.

All tallied contributions (and all other contributions) are placed into the general DSCC bank accounts and used entirely at the DSCC's discretion. The funds tallied to a particular candidate are not "passed through" the DSCC to the candidate who helped raise the funds. Nor are the funds spent on a dollar-for-dollar exchange for the amounts raised by a candidate. When funds are deposited in the DSCC's account, they are used for the Committee's most pressing expenses first. This may be, for example, administrative expenses of the DSCC, or Section 441a(d) spending on behalf of another candidate. There are examples of a candidate who raised large amounts of money for the DSCC (such as the case of a barely challenged incumbent), but received little or no Section 441a(d) funding in return. Similarly, there are candidates who have raised little or no money for the Committee, but received full funding under the relevant contribution and expenditure limitations available to the DSCC.

The DSCC has never raised sufficient funds to "max out" under the coordinated party spending limits to each of its party's Senate nominees in any election cycle. Because of this, the Committee has had to ensure that the monies the party did have available were used to the maximum effect. To this end, in determining which candidates will receive funding under Section 441a(d) and to what extent, the DSCC looks to a variety of factors:

- Whether the race is winnable;
- Whether the candidate has a serious challenger;
- Whether the candidate has been successful in his or her own campaign's fundraising;

- Whether the candidate has assisted the DSCC in its fundraising efforts;
- Whether the DSCC has more pressing expenditures that must be made.

These criteria have been provided and emphasized repeatedly, orally and in writing, to DSCC contributors and Democratic candidates. The significance of the tally, in short, is its role as an incentive to its candidates to support its fundraising efforts. The Committee operates under the direction of Democratic United States Senators and candidates for the benefit of all Democratic Senate candidates, both incumbent and challenger. As the Committee has no independent funding source, it must draw on their efforts to raise the monies required to perform its functions.

Moreover -- and of particular significance -- is the role in the efforts of the Committee and its candidates of the special "coordinated expenditure" provisions of the Act at Section 441a(d)(3). These provisions confer special spending authority on the party, far in excess of the contribution limitations applicable to in-kind support. In fact, in the states where competitive Senate elections occurred this year, such as California, the total party authority for a single race was \$2,454,644; and in all such Senate states, it was over \$21,000,000. The Committee cannot reasonably expect to raise such sums without reference to the candidates who by law are entitled to benefit -- or for that matter, without the assistance of those candidates. Any more restrictive construction would seriously impede the party's success in utilizing authority granted by Congress and intended to strengthen the party structure.<sup>1</sup>

---

<sup>1</sup>It is quite odd that the Republicans chose to challenge this type of fundraising activity by a national party committee, since they themselves indulge in it. Among the many examples that could be cited, attached as Exhibit B is a letter from the Coverdale for Senate Committee. Paul Coverdale was the Republican party nominee for the United States Senate in the state of Georgia. The letter, dated October 9, 1992, describes some of the activities of the Coverdale campaign and goes on to state:

This has led to the Senatorial Committee fully funding [Coverdale's] race and putting over \$500,000 into the

As the complaints point out, an earmarked contribution is one which is made with:

a designation, instruction or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of a clearly identified candidate or a candidate's authorized committee.

11 C.F.R. § 110.6(b)(2) (emphasis added). As the facts above show, under this definition, none of the contributions received by the DSCC and tallied to a particular candidate can be considered earmarked, since such tallied contributions do not result in the funds being spent on behalf of a particular candidate designated by the contributor, nor are contributors allowed to so condition these contributions.

In MUR 377(77), the Commission considered a similar situation and voted to take no action against the candidate and party committee involved in the MUR. This MUR involved the fundraising efforts of a state party to help a candidate retire a debt from his election. The party committee held an event in connection with which funds were specifically solicited for the purpose of retiring this candidate's debt through coordinated party expenditure allowed under 2 U.S.C. § 441a(d).

---

campaign for television. We are trying to double our budget for television and you can make a difference . . .

If you can allocate any amount of your Senatorial Trust funds to our campaign, or have some other means of contributing, it could be the difference in our efforts to retire one of the Senate's most liberal members.

---

\_\_\_\_\_ I want to allocate \_\_\_\_\_ through the Senatorial Trust towards Paul's campaign.

\* \* \* \*

Respondents admitted that at least some of the monies raised at this event would, in fact, be used to retire the candidate's debts. But Respondents also made clear that the use of the funds was exclusively within the discretion of the party committee. The party committee alone would determine whether to spend any of the funds on behalf of the candidate and, if so, in what proportion.

The General Counsel's report in this case recommended a finding of reasonable cause to believe a violation had occurred against the Respondents. The Commission, however, overruled this recommendation and voted to dismiss the matter without taking further action against the Respondents. The Commission voted to instruct the General Counsel's office to "prepare for Commission consideration Regulations interpreting" the issues raised in this MUR. The Commission, to date, has not chosen to promulgate any regulations or provide additional guidance in this area.<sup>2</sup>

The Commission has been aware of the issues raised by candidate fundraising for party committees at least since this MUR was presented to it in 1977. If the Commission believed that the issue raised serious questions about compliance with the Act, or that it provided a significant "loop-hole" in the statute, it presumably would have acted by now to enact regulations to clarify the issues raised. It has not done so. Rather, the Commission, in recently promulgated regulations, has explicitly recognized that this type of fundraising will occur. At 11 C.F.R. § 102.5(a)(3), the Commission promulgated the following regulation:

Any party committee solicitation that makes reference to a federal candidate or a federal election shall be presumed to be for the purpose of influencing a federal election . . .

---

<sup>2</sup>In MUR 2632, the Commission addressed the issue of earmarked contributions through a state party committee. This case is distinguishable from the matter before the Commission here given the Commission's finding of a clear designation of the funds by the contributor (despite denials of the contributor) and the apparent use of the funds, in fact, to benefit the designated candidate, thereby apparently meeting the requirement of the earmarking provision that the designation "results in" the contribution being spent to benefit the designated candidate.



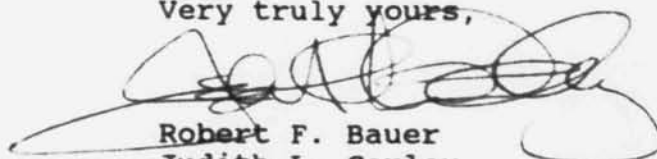
Mary P. Mastrobattista  
November 9, 1992  
Page 6

This presumption may be rebutted by demonstrating to the Commission that the funds were solicited with express notice that they would not be used for federal election purposes.

Based on the foregoing, Respondent asks that this complaint be dismissed with no further action by the Commission. The complaints were motivated purely by partisan political goals and prove no violation of the campaign laws or the Commission's regulations.

If you have any questions or need additional information, please let me know.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read 'R. Bauer', is written over the typed name.

Robert F. Bauer  
Judith L. Corley  
Counsel to Respondents

95043690023



**Democratic Senatorial Campaign Committee**  
430 So. Capitol Street, S.E., Washington, D.C. 20540 • (202) 224-2447

August 10, 1992

**Chairman**

Charles S. Robb, VA

**Ex-Officio**

George Mitchell, ME

**Program Chairman**

John D. Rockefeller IV, WV  
National Finance Council

Richard Bryan, NV

Majority Trust

Bob Graham, FL

Leadership Circle

David Pryor, AR

Business Roundtable

Paul Simon, IL

Labor Council

**Full Committee**

Lloyd Bentsen, TX

Joseph Biden, DE

Bill Bradley, NJ

John Breaux, LA

Alan Cranston, CA

Thomas Daschle, SD

Christopher Dodd, CT

Wyche Fowler, GA

Albert Gore, TN

Daniel Inouye, HI

Bennett Johnston, LA

Edward Kennedy, MA

Robert Kerrey, NE

John Kerry, MA

Herbert Kohl, WI

Frank Lautenberg, NJ

Joseph Lieberman, CT

Howard Metsenbaum, OH

Barbara Mikulski, MD

Sam Nunn, GA

Donald Riegle, MI

Jim Sasser, TN

Paul Wellstone, MN

Mr. Don Gevirtz  
Chairman  
MDG Corporation  
30343 Canwood St.  
Suite 200  
Agoura Hills, CA 91301

Dear Mr. Gevirtz:

Thank you for your contribution to the Democratic Senatorial Campaign Committee. The DSCC is grateful for your generosity and involvement with the committee.

On the check you designate the contribution to Dianne Feinstein. We assume that you intend the "tallying" or crediting of the contribution to Dianne Feinstein, which will be taken into account by DSCC in allocating funds in support of his re-election. Contributions "tallied" to a Senator are a significant factor in the Committee's allocation decisions.

We note that the amount to be allocated is decided by the DSCC within its discretion. For this reason the DSCC does not treat a contribution such as yours as "earmarked" and does not accept earmarked contributions.

If you have a different expectation about the uses of this contribution, we will promptly refund it to you at your request. Please advise if this is the case.

If you have any questions, please do not hesitate to contact me at (202) 224-2447. I appreciate your cooperation in the matter.

Sincere thanks,

Grace M. Coyle  
Finance Assistant





# Democratic Senatorial Campaign Committee

430 Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447

Chairman  
Charles S. Robb, VA

Ex-Officio  
George Mitchell, ME

Program Chairman  
John D. Rockefeller IV, WV  
National Finance Council

Richard Bryan, NV  
Majority Trust

Bob Graham, FL  
Leadership Circle

David Pryor, AR  
Business Roundtable

Paul Simon, IL  
Labor Council

Full Committee  
Lloyd Bentsen, TX  
Joseph Biden, DE  
Bill Bradley, NJ  
John Breaux, LA  
Alan Cranston, CA  
Thomas Daschle, SD  
Christopher Dodd, CT  
Wyche Fowler, GA  
Albert Gore, TN  
Daniel Inouye, HI  
Bennett Johnston, LA  
Edward Kennedy, MA  
Robert Kerry, NE  
John Kerry, MA  
Herbert Kohl, WI  
Frank Lautenberg, NJ  
Joseph Lieberman, CT  
Howard Matsenbaum, OH  
Barbara Mikulski, MD  
Sam Nunn, GA  
Donald Riegle, MI  
Jim Sasser, TN  
Paul Wellstone, MN

August 10, 1992

Ms. Stacey Winkler  
c/o Taylor & Lieberman, AAC  
10866 Wilshire Blvd., Suite 100  
Los Angeles, CA 90024

Dear Ms. Winkler:

Thank you for your contribution to the Democratic Senatorial Campaign Committee. The DSCC is grateful for your generosity and involvement with the committee.

On the check you designate the contribution to Geraldine Ferraro. We assume that you intend the "tallying" or crediting of the contribution to Geraldine Ferraro, which will be taken into account by DSCC in allocating funds in support of his re-election. Contributions "tallied" to a Senator are a significant factor in the Committee's allocation decisions.

We note that the amount to be allocated is decided by the DSCC within its discretion. For this reason the DSCC does not treat a contribution such as yours as "earmarked" and does not accept earmarked contributions.

If you have a different expectation about the uses of this contribution, we will promptly refund it to you at your request. Please advise if this is the case.

If you have any questions, please do not hesitate to contact me at (202) 224-2447. I appreciate your cooperation in the matter.

Sincere thanks,

Grace M. Coyle  
Finance Assistant

Paid for had authorized by the Democratic Senatorial Campaign Committee • Contributions are not tax deductible

EXHIBIT A

18-09-1992

FROM COVERDELL FOR SENATE

TO

91215

.01

# Coverdell

## U.S. SENATE

DATE: OCTOBER 9, 1992  
TO:  
FROM: PAUL COVERDELL  
RE: U.S. SENATE RACE

I tried to contact you by phone to update you on our campaign to unseat Democrat Senator Wyche Fowler of Georgia.

I am one of the few pro-choice Republican candidates with a strong chance of winning a seat in the U.S. Senate.

A recent poll by the Senatorial Committee indicates that Fowler is extremely vulnerable in this anti-incumbent election year. Here is the good news:

1. Nearly half of Georgia voters want to see a new person in the Senate.
2. Fowler's negatives have grown to over 30 percent.
3. For the first time in this campaign, Fowler's support has dropped below 50 percent of the voters while mine has more than doubled.
4. Importantly, when informed on Fowler's liberal votes, such as his vote against the Gulf War, my support rises to 42 percent and his collapses to 29 percent.

This has led to the Senatorial Committee fully funding the race and putting over \$500,000 into the campaign for television. We are trying to double our budget for television and you can make a difference. Please give me a call at (404) 320-1992.

If you can allocate any amount of your Senatorial Trust funds to our campaign, or have some other means of contributing, it could be the difference in our efforts to retire one of the Senate's most liberal members.

\_\_\_\_\_ I want to allocate \_\_\_\_\_ through the Senatorial Trust towards Paul's campaign.

\_\_\_\_\_ I want to pledge a contribution of \_\_\_\_\_.

\_\_\_\_\_ I would like to speak with Paul about his campaign. Please call my office to schedule a phone conversation.

Please fax this form back to (404) 329-7276 or call David Morgenstern at (404) 320-1992 for further information.

1730 Northside Expressway • Atlanta, Georgia 30329 • (404) 320-1992 • Fax: (404) 329-7276

EXHIBIT B

95043690096

OGC 7392

**MORGAN, LEWIS & BOCKIUS**

COUNSELORS AT LAW  
2000 ONE LOGAN SQUARE  
PHILADELPHIA, PENNSYLVANIA 19103-6993  
TELEPHONE (215) 963-5000  
FAX (215) 963-5299

PHILADELPHIA  
LOS ANGELES  
MIAMI  
LONDON  
FRANKFURT

WASHINGTON  
NEW YORK  
HARRISBURG  
SAN DIEGO  
BRUSSELS  
TOKYO

GREGORY M HARVEY  
DIAL DIRECT (215) 963-5427

November 9, 1992

Federal Election Commission  
999 "E" Street, N.W.  
Washington, DC 20463

Attention: Office of the General Counsel  
Mary P. Mastrobattista

Re: MUR 3620  
Lynn Yeakel for Senate and  
Sidney D. Rosenblatt, as Treasurer

Greetings:

This letter constitutes the response of Lynn Yeakel for Senate and Sidney D. Rosenblatt, as Treasurer, to the complaint filed with the Federal Election Commission and identified as MUR 3620.

On behalf of Respondents Lynn Yeakel for Senate and Sidney D. Rosenblatt as Treasurer (sometimes referred to herein as "the instant respondents"), we have reviewed the response of the Democratic Senatorial Campaign Committee ("DSCC") to the complaints identified as MURs 3617, 3620, 3653 and 3658, which response is being submitted contemporaneously with the instant letter response, and on behalf of our clients we adopt and incorporate by reference the DSCC response, including the factual and legal analysis set forth therein.

Further in response to the complaint identified with MUR 3620, we note that the complainant has failed to identify any facts which indicate any violation whatsoever by the instant respondents. The invitation from Norman and Irma Braman, attached to the complaint as Exhibit 6, is plainly identified, both on the invitation itself and on the reply card, as being "Authorized and paid for by the Democratic Senatorial Campaign Committee" and the reply envelope is addressed to the Democratic Senatorial Campaign Committee at its address in Washington, D.C. Neither in the invitation attached as Exhibit 6 nor on any other materials submitted with the complaint is there any communication attributable to respondents Lynn Yeakel for Senate and Sidney D.

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Federal Election Commission  
November 9, 1992  
Page 2

9504369008  
Rosenblatt, as Treasurer. Accordingly, unless the Commission were to determine that the Federal Campaign Practices Act prohibits the attendance of an individual candidate at an event sponsored by one of the party committees, such as the Democratic or Republican Senate Campaign Committees or the Democratic or Republican National Committees, the reference in the invitation to "a dinner honoring Lynn Yeakel, candidate for United States Senate . . . ." offers no basis whatsoever for any action against candidate Lynn Yeakel or her authorized campaign committee. If the Commission were to determine that the mere presence of a candidate at an event sponsored by a party committee could be the basis of enforcement action against either that party committee or the individual candidate's authorized committee, such a determination would place in doubt literally tens of millions of contribution dollars raised by both major parties in the 1992 general election cycle.

For the reasons stated in the letter response of the Democratic Senatorial Campaign Committee, incorporated herein by reference and in the instant letter response, we urge on behalf of respondents Lynn Yeakel for Senate and Sidney D. Rosenblatt, as Treasurer, that the complaint at MUR 3620 be dismissed with no further action by the Commission.

Respectfully yours,

  
Gregory M. Harvey

GMH:pg

O6C7425

MANATT, PHELPS, PHILLIPS & KANTOR

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

1200 NEW HAMPSHIRE AVENUE, N.W.

SUITE 200

WASHINGTON, D.C. 20036-6889

TELEPHONE (202) 463-4300

FAX (202) 463-4394

(202) 463-4388

LOS ANGELES  
1388 WEST OLYMPIA BOULEVARD  
LOS ANGELES, CALIFORNIA 90064-2844  
(213) 384-1000

RECEIVED  
FEDERAL ELECTION COMMISSION  
NOV 10 PM 3:33

November 10, 1992

Teresa Hennessy  
Assistant General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: MURs 3617 and 3620  
Feinstein for Senate

Dear Ms. Hennessy:

This response is submitted on behalf of the Feinstein for Senate Committee and Michael J. Barrett, Treasurer, in the above-referenced matters. For the reasons set forth below, the Federal Election Commission ("Commission" or "FEC") should find no reason to believe that the Feinstein Committee violated the Federal Election Campaign Act of 1971, 2 U.S.C. § 431 et seq. (the "Act" or "FECA"), or the FEC regulations. Accordingly, these matters should be dismissed.

I. BACKGROUND

A. THE COMPLAINTS

MUR 3617 filed by Richard H. McBride on behalf of the Seymour for Senate campaign, and MUR 3620 filed by the National Republican Senatorial Committee ("NRSC"), challenge the fundraising practice of the Democratic Senatorial Campaign Committee ("DSCC") by which Democratic Senate candidates assist the DSCC in its efforts to raise funds to make coordinated party expenditures pursuant to 2 U.S.C. § 441a(d).<sup>1/</sup> The complaints allege that the DSCC efforts to raise 441a(d) funds with the assistance of its nominees violated the FEC earmarking regulations and resulted in excessive contributions to the Feinstein Committee.

<sup>1/</sup>The Seymour for Senate campaign also filed a civil action in the United States District Court for the Central District of California, Case No. CZ92-6143RMT(Ex), based upon the same allegations. The action was dismissed on November 3, 1992 on jurisdictional grounds.

95043690029



Teresa Hennessy  
November 10, 1992  
Page 2

Neither complaint submits any evidence that the funds contributed to the DSCC in response to the Feinstein solicitations were in any way earmarked to the Feinstein Committee or were in fact spent on behalf of the Feinstein Committee.

**B. RELEVANT STATUTORY AND REGULATORY PROVISIONS**

**1. Earmarking**

11 C.F.R. § 110.6(b) defines "earmarked" as a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.

Earmarked contributions must be forwarded to the recipient candidate within 10 days of receipt. 11 C.F.R. § 110.6(b)(2)(iii); 11 C.F.R. § 102.8(a).

**2. Coordinated Party Expenditures**

Under 2 U.S.C. § 441a(d), the national and state party committees are permitted to spend up to two cents multiplied by the voting age population of a State in coordinated expenditures on behalf of its Senate nominees. In 1992, the party 441a(d) spending authority on behalf of the Feinstein campaign was in excess of \$2.4 million.

In order to make 441a(d) expenditures, the national party committees may raise up to \$20,000 per calendar year from an individual contributor and up to \$15,000 per calendar year from a multicandidate political committee. 2 U.S.C. §§ 441a(a)(1) and (2). 441a(d) expenditures may be fully coordinated with a candidate's campaign.

The Commission has long recognized the prominent role of candidates in raising funds for party expenditures. 11 C.F.R. § 102.5(a)(3) specifically acknowledges that party fundraising efforts will mention federal candidates, and provides that funds raised as a result of solicitations mentioning federal candidates are presumed to be raised for federal purposes.

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Teresa Hennessy  
November 10, 1992  
Page 3

**C. THE DSCC TALLY SHEET**

In order to raise the funds to make 441a(d) expenditures, the DSCC enlists the assistance of its Senate candidates. To keep track of the amount raised for the DSCC by each candidate, the DSCC maintains a "tally sheet" recording the amount of funds attributable to the efforts of each candidate. The DSCC, however, does not accept any earmarked contributions, and no tallied contributions are restricted or directed for use on behalf of any particular candidate. All contributions received by the DSCC are commingled in the DSCC bank accounts;<sup>2/</sup> no separate accounts are maintained for any candidate.

In determining how much to spend on behalf of each candidate pursuant to the 441a(d) authority, the DSCC takes a variety of factors into account. These factors are fully described in the DSCC response to these matters. It is the Feinstein campaign's understanding that the amount of contributions tallied to each candidate is but one factor in the DSCC decision as to how much money will be spent under 441a(d). The tally sheet is in no way a guarantee that the tallied amounts will be spent on behalf of a particular candidate, or that any particular contribution will be directed to the benefit of any candidate.

**II. RESPONSE**

The central contention of both complaints is that the solicitation by Feinstein to her tally at the DSCC results in "earmarking" of the contributions by the contributors. This contention is incorrect. Under the FEC regulations, contributions are considered "earmarked" only when there is a designation, instruction or encumbrance which results in a contribution being directed to or spent on behalf of a particular candidate.

Thus, there is a two-part test to determine whether a contribution is earmarked: (1) there must be a clear designation by the contributor, and (2) this designation must result in a contribution being directed to or spent on behalf of the designated candidate. Neither of these criteria is met under the DSCC tally sheet.

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<sup>2/</sup>The tally is sometimes referred to as an account, but this word is used in the sense of an accounting record, not a bank account.



Teresa Hennessy  
November 10, 1992  
Page 4

First, the DSCC does not accept earmarked contributions. Second, the contributions raised for the tally are not passed on to the candidates or directed to the candidates.

The amount of funds expended under 441a(d) is not based on the tally amount; rather the tally figure is only one factor used in determining the amount allocated to 441a(d) for a particular candidate. The contributors to the DSCC relinquish all direction and control over their contribution. It is left to the sole discretion of the Senators directing the DSCC to determine how DSCC funds are spent.

Since the DSCC retains complete control over the allocation of 441a(d) funds and that allocation is not determined by designation of the contributor, there is no earmarking.<sup>3</sup>

441a(d) expenditures are a unique spending authority under FECA. Although they may be fully coordinated with a campaign, they are not considered contributions to a candidate's campaign. Only party committees may make 441a(d) expenditures and the contribution limits to the party to make 441a(d) expenditures are higher than the limits to any other type of political committee.

The candidates' roles in party fundraising and spending are also unique. The fact that 441a(d) expenditures may be fully coordinated arises from Congressional recognition of the important relationship between the parties and their candidates. The Commission has long recognized this relationship and, indeed, various FEC regulations acknowledge that the parties use their nominees to raise party funds. See 11 C.F.R. § 102.5(a)(3). There is no restriction in the Act limiting the ability of candidates to raise funds for party activities, and any interpretation of the FEC regulations limiting the ability of candidates to raise funds for the party would be contrary to the

---

<sup>3</sup>/This case is clearly distinguishable from the facts found by the FEC in MUR 2632. In that case, the Commission found that there was a written designation of the contribution and that the contributed funds were in fact expended by the state party on behalf of the candidate. As described above, the DSCC does not accept earmarked contributions and a candidate's tally amount is but one factor in determining the 441a(d) expenditure allocation.

95043690102

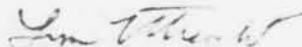
Teresa Hennessy  
November 10, 1992  
Page 5

purposes of the Act and deleterious to the health of the parties.<sup>4</sup>

The Feinstein for Senate Committee did actively participate in the DSCC efforts to raise funds for 441a(d) expenditures. No earmarked contributions, however, were solicited, received or passed on to the Feinstein Committee by the DSCC, and the complaints provide no evidence to the contrary. The Committee received no commitment from the DSCC that any funds raised by the Committee for the DSCC would be spent on behalf of the Committee.

In light of the foregoing circumstances, the Commission should find no reason to believe that the Feinstein Committee violated any provision of the Act and close the file.

Sincerely,



Lyn Utrecht  
Manatt, Phelps, Phillips & Kantor

---

<sup>4</sup>/In MUR 377 the Commission concluded that the applicability of "earmarking" to Section 441a(d) should be dealt with in regulations. No such regulations have ever been submitted for comment or promulgated. However, there is language in the General Counsel's reports in MUR 2632 suggesting that the Commission has decided that earmarking applies to Section 441a(d). If the Commission has in fact made this decision, it should be published in the form of regulations for public comment. No such important new interpretation should be made in the context of a MUR without notice.

95043690103

DAVID F. KIRBY  
JOHN R. WALLACE \*  
PAUL R. CREECH  
PETER J. SARDA  
ROBERT E. ZAYTOUN \*  
RICHARD P. NORDAN  
RICHARD T. FOUNTAIN, III  
CHERYL M. SWART  
PATRICIA L. WILSON

\*ALSO ADMITTED IN FLORIDA

KIRBY, WALLACE, CREECH,  
SARDA & ZAYTOUN

ATTORNEYS AT LAW  
UCB PLAZA  
3605 GLENWOOD AVENUE, SUITE 360  
RALEIGH, NORTH CAROLINA 27612

November 18, 1992

MAILING  
P.O. BOX 12066  
RALEIGH, N.C. 27605  
(919) 782-9322

FAX:  
(919) 782-9323

VIA FACSIMILE  
ORIGINAL VIA U.S. MAIL

Mary P. Mastrobattista, Esq.  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

RE: MUR 3620  
Response of Sanford for  
Senate Committee

Dear Ms. Mastrobattista:

By this letter, the Sanford for Senate Committee responds to the Complaint of the National Republican Senatorial Committee initiating MUR 3620 and alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

The Complaint alleges that the Sanford for Senate Committee (hereinafter the "Sanford Committee" or the "Committee"), the Democratic Senatorial Campaign Committee (hereinafter "DSCC") and others violated federal election laws prohibiting earmarking. Specifically, the Complaint alleges the acceptance of earmarked contributions by DSCC resulting in excessive contributions to certain Respondent Committees and by the failure of Respondents to comply with earmarking regulations of the Federal Election Commission (hereinafter "FEC" or the "Commission").

The Complaint attacks the tally sheet concept and treats a tallied contribution as the equivalent of an earmarked contribution. Such is not the case. As is herein set forth, and as is set forth in the Response of the DSCC, the evidence and arguments of which are incorporated herein by reference, the Complaint is without merit and should be dismissed without further action by the Commission.

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Mary P. Mastrobattista, Esq.  
November 18, 1992  
Page Two

As provided by the Commission, an earmarked contribution is one which is made with:

[A] designation, instruction or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of a clearly identified candidate or a candidate's authorized committee.

11 C.F.R. § 110.6(b)(1).

The Complaint is inaccurate in its allegations of fact and in its application of law. No prohibited earmarking arises from the conduct of the Respondents, because DSCC does not permit contributors to condition their contribution on the DSCC contributing in turn to an identified Senate candidate. Further, the DSCC tally does not result in funds being spent in behalf of a candidate identified for tally by a DSCC contributor.

Consistent with the response of the Democratic Senatorial Campaign Committee, the Respondent Sanford Committee understands the tally sheet to be a component of the DSCC's efforts to track fund raising by the DSCC's constituents, elected Democratic Senators and Democratic nominees for election to the Senate. The Respondent Sanford Committee recognizes that the DSCC is dependent upon the efforts of its constituents for fund raising efforts in behalf of the DSCC and might, appropriately, choose to monitor such efforts. However, the Sanford Committee also recognizes that DSCC will not accept earmarked contributions and has never expected that funds raised by the Sanford Committee for the benefit of DSCC would pass through the DSCC back to the Sanford Committee.

It is in fact understood that funds raised for the DSCC are to be expended by the DSCC in the DSCC's discretion, whether for DSCC expenses or as § 441a(d) coordinated expenditures. The DSCC has always

95043690105

Mary P. Mastrobattista, Esq.  
November 18, 1992  
Page Three

asserted its decision making authority with respect to funds in its treasury, and candidate committees have never been led to believe that they could control DSCC allocations of § 441a(d) money by their fund raising efforts in behalf of the DSCC. Indeed, Democratic Senate candidates recognize that the prospects for success in races around the country should be determinative of DSCC decisions to expend DSCC funds.

The Complaint alleges, by the document attached thereto as Exhibit "5," that Senator Sanford "asked his contributors to evade Federal limits through the 'tally sheet.'" That allegation is patently false.

Exhibit "5" (attached hereto for reference) provides that "the DSCC may accept money above and beyond what a candidate raises." It further provides "if you have given your personal maximum to a candidate, you may still give additional monies to the DSCC." The solicitation further indicates that contributions "may be tallied."

Nowhere does the document ask contributors to "evade Federal limits" (as alleged by Complainant) nor does the document suggest that funds contributed to the DSCC will be passed through to the Sanford for Senate Committee. The document emphasizes primarily the benefits to DSCC contributors, including participation in various DSCC programs and events including retreats, dinners, receptions and round table discussions. The emphasis of the Sanford solicitation in behalf of the DSCC is that the DSCC "works to elect Democratic Senators across the country."

By letter dated November 4, 1992, the Commission, through counsel, has provided this Respondent with additional materials provided to the Commission by the Complainant. Those materials relate to the New York Senate contest. Contrary to Complainant's assertions, it is not reasonable to assume that the purported state of mind of certain New York contributors has anything to do with North Carolina contributors.

95043690106



Mary P. Mastrobattista, Esq.  
November 18, 1992  
Page Four

CONCLUSION

Neither the Sanford Committee nor DSCC contributors, contributing at the encouragement of the Sanford Committee, had any discretion or control over the expenditure by DSCC of its funds. No representation to any prospective contributor suggests as much, and in fact DSCC correspondence and practice indicate to the contrary. Therefore, for the reasons set forth herein, and as set out in the Response of the Democratic Senatorial Campaign Committee, the arguments of which are incorporated herein by reference, this matter should be dismissed without further action.

Based upon the foregoing, the Respondent Sanford Committee requests that this matter be dismissed with no further action by the Commission. The timing of the Complaint suggests a partisan motivation, and the factual allegations do not amount to a violation of the Federal Election Campaign Act or the Commission's regulations.

Sincerely,

KIRBY, WALLACE, CREECH,  
SARDA & DAYTON

John R. Wallace

JRW/pgj

Enclosure

cc: Mr. Alton G. Buck, Treasurer

95043690107

95043690108

Exhibit 5



**TERRY SANFORD'S CAMPAIGN FOR U.S. SENATE**  
and the  
**Democratic Senatorial Campaign Committee**

The Democratic Senatorial Campaign Committee (DSCC) works to elect Democratic Senators across the country. One of their tools is financial. The DSCC may accept money *above and beyond* what a candidate raises. If you have given your personal maximum to a candidate, you may still give additional monies to the DSCC. Individuals may give a total of \$20,000 to the DSCC; Political Action Committees may give up to \$15,000. If specified, such contributions may be "talled" to Terry Sanford's DSCC tally sheet.

The DSCC will help the Sanford campaign according to need, winability, and our tally sheet total. Terry Sanford's race will be close: the tally sheet will be of vital importance.

In addition to helping Terry Sanford, DSCC contributions offer further benefits, according to the level of contribution:

**The Majority Trust - \$20,000**

*The Majority Trust reflects the highest level of support for the DSCC. Benefits include participation in all DSCC donor program events sponsored by the Leadership Circle and the Business Roundtable, as well as events planned exclusively for Majority Trust members. Past programs have included retreats in Aspen, Newport, Rhode Island, and Florida. The retreats feature guests including Majority Leader George Mitchell, Chairman Chuck Robb, Senator Lloyd Bentsen and others.*

**The Leadership Circle - \$15,000**

*The Leadership Circle provides an opportunity for major contributors and Democratic Senators and candidates to exchange resources and ideas. Leadership Circle benefits include special weekends centered around the Superbowl and the Kentucky Derby, as well as a table at the Annual Congressional Dinner and a variety of regional events. Some of the past Leadership Circle events include: a dinner at the home of Senator and Mrs. John D. Rockefeller IV, a reception at the home of Mrs. Pamela Harriman, a cocktail reception on Capitol Hill for Majority Leader George Mitchell, and a spring dinner/dance at the Ritz-Carlton.*

**The Business Roundtable-\$5,000**

*The Business Roundtable brings Senators together with business leaders interested in politics and public policy. The Business Roundtable hosts six meetings a year in Washington and several regional meetings. It includes a complimentary invitation to the annual Fall Dinner. Participants have included Majority Leader George Mitchell, Senator Sam Nunn, and Senator Lloyd Bentsen.*

Electing a Democratic majority in the Senate is vital business. Terry Sanford needs to be in that majority. To help him, and to help the DSCC, please make your check to DSCC, and note on it "Sanford Tally Sheet". Then mail your check to Sanford for Senate, P.O. Box 30787, Raleigh, N.C. 27622-0787, or to the DSCC office in Washington.

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00c 3171

# National Republican Senatorial Committee

SENATOR PHIL GRAMM  
CHAIRMAN

JEB HENSARLING  
EXECUTIVE DIRECTOR

January 8, 1993

93 JAN -8 PM 2:30

Ms. Teresa Hennessy  
Assistant General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20463


RE: MUR 3620

Dear Ms. Hennessy:


This letter and its attachment are submitted as additional information in MUR 3620.

The attachment, which is part of a solicitation for Terry Sanford, evidences the "tally" scheme which is the subject of the initial complaint.

Sincerely,

  
Jay Velasquez  
Legal Counsel

Sworn to and subscribed  
before me this 8 day of January 1993.

  
Notary Public

Lana C. Guiler  
Notary Public, District of Columbia  
My Commission Expires July 14, 1997

RONALD REAGAN REPUBLICAN CENTER  
425 SECOND STREET, N.E. • WASHINGTON, D.C. 20002 • (202) 675-6000

PAID FOR AND AUTHORIZED BY THE NATIONAL REPUBLICAN SENATORIAL COMMITTEE

95043690110

# **TERRY SANFORD'S CAMPAIGN FOR U.S. SENATE** and the **Democratic Senatorial Campaign Committee**

The Democratic Senatorial Campaign Committee [DSCC] works to elect Democratic Senators across the country. One of their tools is financial. The DSCC may accept money *above and beyond* what a candidate raises. If you have given your personal maximum to a candidate, you may still give additional monies to the DSCC. Individuals may give a total of \$20,000 to the DSCC; Political Action Committees may give up to \$15,000. If specified, such contributions may be "tallied" to Terry Sanford's DSCC tally sheet.

The DSCC will help the Sanford campaign according to need, winability, and our tally sheet total. Terry Sanford's race will be close: the tally sheet will be of vital importance.

In addition to helping Terry Sanford, DSCC contributions offer further benefits, according to the level of contribution:

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## **The Leadership Circle - \$15,000**

*The Leadership Circle provides an opportunity for major contributors and Democratic Senators and candidates to exchange resources and ideas. Leadership Circle benefits include: special weekends centered around the Superbowl and the Kentucky Derby, as well as a table at the Annual Congressional Dinner and a variety of regional events. Some of the past Leadership Circle events include: a dinner at the home of Senator and Mrs. John D. Rockefeller IV, a reception at the home of Mrs. Pamela Harriman, a cocktail reception on Capitol Hill for Majority Leader George Mitchell, and a spring dinner/dance at the Ritz-Carlton.*

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*The Business Roundtable brings Senators together with business leaders interested in politics and public policy. The Business Roundtable hosts six meetings a year in Washington and several regional meetings. It includes a complimentary invitation to the annual Fall Dinner. Participants have included Majority Leader George Mitchell, Senator Sam Nunn, and Senator Lloyd Bentsen.*

Electing a Democratic majority in the Senate is vital business: Terry Sanford needs to be in that majority. To help him, and to help the DSCC, please make your check to DSCC, and note on it "Sanford Tally Sheet". Then mail your check to Sanford for Senate, P.O. Box 30787, Raleigh, N.C. 27622-0787, or to the DSCC office in Washington.

9 5 0 4 3 6 9 0 1 1

**Yes, I would like to do my part to keep Terry Sanford and Democrats like him in the U. S. Senate. Please include me in the:**

**Majority Trust**

\$20,000

**Leadership Circle**

\$15,000

**Business Roundtable**

\$5,000

Name \_\_\_\_\_

Telephone \_\_\_\_\_

Home Address \_\_\_\_\_

City and State \_\_\_\_\_

Employer or Firm \_\_\_\_\_

Title or Position \_\_\_\_\_

Business Address \_\_\_\_\_

Self-employed ☐

Please make your check payable to:  
Democratic Senatorial Campaign Committee and return to  
Post Office Box 30787 Raleigh, North Carolina 27622-0787

This information is required by the Federal Election Commission  
Authorized and paid for by the Sanford for Senate campaign.  
Contributions are not tax deductible on federal tax returns.

**The Democratic Senatorial Campaign Committee**

*cordially invites you to a reception  
with Senator George Mitchell, Majority Leader  
United States Senate  
honoring Senator Terry Sanford  
Friday, July 24 at five o' clock  
at the home of L. Richardson Preyer  
603 Sunset Drive  
Greensboro, North Carolina*

**DSCC membership required**

9 5 0 4 3 6 9 0 1 1 2



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

January 11, 1993

Mr. Jay Velasquez  
National Republican Senatorial Committee  
425 Second Street, N.E.  
Washington, D.C. 20002

RE: MUR 3620

Dear Mr. Velasquez:

This letter acknowledges receipt on January 8, 1993, of the supplement to the complaint you filed on September 24, 1992, against Lynn Yeakel for Senate and Sidney D. Rosenblatt, as treasurer; Feinstein for Senate Committee, and Michael J. Barrett, as treasurer; Terry Sanford for U.S. Senate and Alton G. Buck, as treasurer, and the Democratic Senatorial Campaign Committee and Thomas J. Lehner, as treasurer. The respondents will be sent copies of the supplement. You will be notified as soon as the Federal Election Commission takes final action on your complaint.

Sincerely,

A handwritten signature in cursive script, reading "Mary P. Mastrobattista", is written above the typed name.

Mary P. Mastrobattista  
Attorney

95043690113



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 11, 1993

William C. Oldaker, Esq.  
Manatt, Phelps, Phillips & Kantor  
1200 New Hampshire Ave., N.W.  
Suite 200  
Washington, D.C. 20036-6889

RE: MUR 3620  
Feinstein for Senate Committee  
and Michael J. Barrett, as  
treasurer

Dear Mr. Oldaker:

On September 29, 1992, your clients were notified that the Federal Election Commission received a complaint from the National Republican Senatorial Committee alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time your clients were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification. By letter dated October 21, 1992, this Office granted an extension of time to respond to the complaint until November 10, 1992. On November 10, 1992, you submitted a response to the complaint on behalf of your clients.

On January 8, 1993, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

If you have any questions, please contact me at  
(202) 219-3400.

Sincerely,

*Mary P. Mastrobattista*

Mary P. Mastrobattista  
Attorney

Enclosure

95043690114





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 11, 1993

Robert F. Bauer, Esq.  
Perkins Coie  
607 14th Street, N.W.  
Washington, D.C. 20005-2011

RE: MUR 3620  
Democratic Senatorial Campaign  
Committee and Thomas J. Lehner,  
as treasurer

Dear Mr. Bauer:

On September 29, 1992, your clients were notified that the Federal Election Commission received a complaint from the National Republican Senatorial Committee alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time your clients were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification. By letter dated October 14, 1992, this Office granted an extension of time to respond to the complaint until November 9, 1992. On November 9, 1992, you filed a response to the complaint on behalf of your clients.

On January 8, 1993, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

If you have any questions, please contact me at  
(202) 219-3400.

Sincerely,

*Mary P. Mastrobattista*

Mary P. Mastrobattista  
Attorney

Enclosure

95043690115





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

January 11, 1993

John R. Wallace, Esq.  
Kirby, Wallace, Creech, Sarda & Zaytoun  
P.O. Box 12065  
Raleigh, NC 27605

RE: MUR 3620  
Terry Sanford for U.S. Senate  
and Alton G. Buck, as treasurer

Dear Mr. Wallace:

On September 29, 1992, your clients were notified that the Federal Election Commission received a complaint from the National Republican Senatorial Committee alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time your clients were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification. By letter dated October 27, 1992, this Office granted an extension of time to respond to the complaint until November 18, 1992. On November 18, 1992, you filed a response to the complaint on behalf of your clients.

On January 8, 1993, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

If you have any questions, please contact me at  
(202) 219-3400.

Sincerely,

*Mary P. Mastrobattista*

Mary P. Mastrobattista  
Attorney

Enclosure

95043690116



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

January 11, 1993

Gregory M. Harvey, Esq.  
Morgan, Lewis & Bockius  
2000 One Logan Square  
Philadelphia, PA 19103-6993

RE: MUR 3620  
Lynn Yeakel for Senate  
and Sidney D. Rosenblatt,  
as treasurer

Dear Mr. Harvey:

On September 29, 1992, your clients were notified that the Federal Election Commission received a complaint from the National Republican Senatorial Committee alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time your clients were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification. By letter dated October 21, 1992, this Office granted an extension of time to respond to the complaint until November 9, 1992. On November 9, 1992, you filed a response to the complaint on behalf of your clients.

On January 8, 1993, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

If you have any questions, please contact me at  
(202) 219-3400.

Sincerely,

*Mary P. Mastrobattista*

Mary P. Mastrobattista  
Attorney

Enclosure

95043690117



FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

AUGUST 16, 1994

Michael J. Barrett, Treasurer  
Feinstein for Senate Committee  
909 Montgomery Street, Suite 400  
San Francisco, CA 94133

RE: MUR 3617 and MUR 3620

Dear Mr Barrett:

On May 2, 1994, you requested that the Federal Election Commission permit the Feinstein for Senate Committee ("Committee") to terminate pursuant to 2 U.S.C. § 433(d) and Section 102.3 of the Commission's Regulations. Because of the ongoing enforcement matters involving your Committee, this request has been denied. Therefore, you are reminded that the Committee must continue to file all the required reports with the Commission until such time as the enforcement matter has been closed as to the Committee.

If you have any questions, please contact me at  
(202) 219-3400.

Sincerely,

*Mary Ann Bumgarner*  
Mary Ann Bumgarner  
Attorney

cc: Reports Analysis Division

95043690118

National Republican Senatorial Committee

OGC 6963

SENATOR PHIL GRAMM  
CHAIRMAN

October 16, 1992

JES HENSARLING  
EXECUTIVE DIRECTOR

Mrs. Joan Aikens  
Chairman  
Federal Elections Commission  
999 E Street, N.W.  
Washington D.C. 20463

MUR 3658

92 OCT 16 PM 5:17

Dear Madame Chairman:

This letter constitutes a formal complaint pursuant to 2 U.S.C. 437 g(a) of the Federal Election Campaign Act (the "Act") and sets forth reasons to believe that a violation of the Act and Federal Election Commission (the "Commission") regulations have been committed by the Abrams '92 committee (the "Abrams' Campaign"), a political committee registered with the Commission.

As the Commission well knows, under the law all personal contributions that are earmarked for a particular candidate are deemed contributions from the contributor to the candidate. 11 C.F.R. 110.6(a). This precludes both the candidate and the contributor from evading the limits the Act imposes on the amount any person may contribute to a federal campaign. Based upon the evidence set forth below, the National Republican Senatorial Committee (the "NRSC") believes that the Abrams Campaign has violated these legal provisions and has accepted excessive contributions from individual donors.

The Democratic Senatorial Campaign Committee (the "DSCC") has repeatedly and openly solicited contributions from persons who wish to avoid federal contribution limitations. The DSCC is the respondent of a current complaint designated as MUR 3620 for this same scheme. It is the NRSC's belief that the Abrams Campaign has taken advantage of the DSCC's scheme:

1. In the memo attached as Exhibit 1, the DSCC states that its "tally" program is specifically designed for a senate campaign's maxed-out and high-dollar contributors. The memo represents that through its tally option, an individual can conduit large contributions to particular candidates through the DSCC.

2. In the Times Union article attached as Exhibit 2, Ethan Geto, an aide to Abrams, is reported as stating that 'you try to get people to contribute to the party committee and they typically will credit that to your campaign.' Further, in the same newspaper article, Lawrence Battenwieser, Abrams' chief fundraiser, is reported as stating that donors are told 'there is a substantial likelihood' that money sent to the [DSCC] from New York will end up in Abrams' campaign coffers.

RONALD REAGAN REPUBLICAN CENTER  
425 SECOND STREET N.E. • WASHINGTON D.C. 20002 • (202) 675-6000

PAID FOR AND AUTHORIZED BY THE NATIONAL REPUBLICAN SENATORIAL COMMITTEE

95043690119

9 5 0 4 3 6 9 0 1 2 0

The statements of the Abrams' campaign aides may be true with respect to the DSCC, but, they are not accurate with respect to the other national committees. In fact, often times a candidate from a particular state may not enjoy any of the benefits of contributions to a national committee from contributors from his or her state simply because circumstances indicate that his or her campaign is not a viable enough race to use up committee coordinated funds.

The statements of the Abrams' aides on their face reflect an admission that the Abrams Campaign does in fact tell maxed-out contributors to contribute to the DSCC with a "wink of the eye" letting those contributors know that the money will be funneled to the Abrams Campaign.

The above-referenced Exhibit 1 and the fact that it has been distributed to many if not all senate Democrat candidates along with the arguably boastful tone of the statements of the Abrams' campaign aides reported in the Times Union article indicate that the Abrams Campaign is participating in the DSCC's "tally" program which currently is the subject of MUR 3620.

The NRSC believes that this attempt to launder contributions and evade the law must be condemned. Accordingly, I ask that the Commission's Office of General Counsel expeditiously review this complaint and take appropriate action with regard to these apparent violations of the Act.

The above is true and correct to the best of my knowledge, information and belief.

Respectfully

*Jay Velasquez*  
Jay Velasquez  
Legal Counsel  
on behalf of the  
NRSC

Sworn to and subscribed  
before me this day of October,  
1992

*Lana C. Guler*  
Notary Public

Lana C. Guler  
Notary Public, District of Columbia  
Expires July 14, 1997



EXHIBIT 1



# Democratic Senatorial Campaign Committee

430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447

August 12, 1992

TO: SENATE AA'S & CAMPAIGN FINANCE DIRECTORS

FROM: STEVE RICCHETTI

RE: SPECIAL DSCC CAMPAIGN UPDATE & HI-DONOR  
TALLY PROGRAM W/SENATE COCKTAILS, DINNER &  
BREAKFAST SEPTEMBER 9 & 10

Please join the DSCC for a special program that will be of great benefit to your Senate campaign.

The program is designed for high dollar & max-out contributors to 1992 Senate campaigns.

On Wednesday afternoon September 9, the DSCC will host a campaign conference covering the latest information on the 1992 Senate races. Guest speakers will conduct the sessions.

That evening, donors and contributors will be invited to a special evening of cocktails at the McLean home of Senator & Mrs. Ted Kennedy (6:30 - 8:00 pm) followed by dinner at the home of Senator & Mrs. Charles S. Robb. The following morning, guests will be invited to breakfast at the home of Senator & Mrs. Jay Rockefeller.

The program is specifically designed to encourage max-out and high-dollar contributors to tally \$10,000 or more (per couple) in new money to their preferred Democratic Senate candidate(s).

This is an ideal opportunity for you to cultivate your high dollar prospects and encourage them to support their candidate(s) through the DSCC's tally system.

I encourage you to invite your donors to this special series of events. Please call Stephanie Cooper if you need additional information at (202) 224-2447. Due to space limitations, please RSVP no later than September 1, 1992.

Chairman  
Charles S. Robb, VA

Ex-Officio  
George Mitchell, ME

Program Chairman  
John D. Rockefeller IV, WV  
National Finance Council

Richard Bryan, NV  
Majority Trust

Bob Graham, FL  
Leadership Circle

David Pryor, AR  
Business Roundtable

Paul Simon, IL  
Labor Council

Full Committee  
Lloyd Bentsen, TX  
Joseph Biden, DE  
Bill Bradley, NJ  
John Brown, LA  
Alan Cranston, CA  
Thomas Daschle, SD  
Christopher Dodd, CT  
Wyche Fowler, GA  
Albert Gore, TN  
Daniel Inouye, HI  
Burrill Johnston, LA  
Edward Kennedy, MA  
Robert Kerry, NE  
John Kerry, MA  
Humbert Kohl, WI  
Frank Lautenberg, NJ  
Joseph Lieberman, CT  
Howard Minkoff, OH  
Barbara Mikulski, MD  
Sam Nunn, GA  
Donald Riegle, MI  
Jim Sasser, TN  
Paul Wellstone, MN



## Democratic Senatorial Campaign Committee

430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447

# The Democratic Senatorial Campaign Committee THE TALLY OPTION

### Chairman

Charles S. Robb, VA

### Ex-Officio

George Mitchell, ME

### Program Chairman

John D. Rockefeller IV, WV  
National Finance Council

Richard Bryan, NV

Majority Trust

Bob Graham, FL

Leadership Circle

David Pryor, AR

Business Roundtable

Paul Simon, IL

Labor Council

### Full Committee

Lloyd Bentsen, TX

Joseph Biden, DE

Bill Bradley, NJ

John Breaux, LA

Alan Cranston, CA

Thomas Daschle, SD

Christopher Dodd, CT

Wyke Fowler, GA

Albert Gore, TN

Daniel Inouye, HI

Benjamin Johnston, LA

Edward Kennedy, MA

Robert Kerry, NE

John Kerry, MA

Harper Kohl, WI

Frank Lautenberg, NJ

Joseph Lieberman, CT

Howard Mankin, OH

Berbara Mikulski, MD

Sam Nunn, GA

Donald Stogdill, MI

Jim Wicker, TN

Paul Wellstone, MN

## WHAT ROLE DOES THE DSCC PLAY?

### Funding Democratic Senate Business

The primary function of the Democratic Senatorial Campaign Committee is to provide funding for Democratic Senate candidates in their quest for the U.S. Senate. The Finance Staff of the DSCC raises funds which are allocated to targeted Democratic Senate races based on the campaign's need and winability. These funds provide nominees with an invaluable source of additional funding which helps them keep their competitive edge. The DSCC accepts PAC and individual contributions through a variety of means and donor categories; it cannot accept corporate funds.

## WHY GIVE TO THE DSCC?

Under FEC regulations, an individual may contribute a maximum of \$2000 to a Senate candidate. (\$1000 in the primary and another \$1000 to a general campaign fund). However, an individual may contribute up to \$20,000 annually to a political party organization like the DSCC. PAC's may contribute a maximum of \$15,000 annually to the DSCC. The Committee in turn allocates those funds to Democratic Senate candidates who are up for election in the current cycle. An individual (or PAC) is able to make the maximum legal contribution to assist Democratic Senate candidates financially by contributing to the DSCC.

## WHAT DOES "TALLY" MEAN?

When contributing to the DSCC, a donor may request that his or her contribution be "tallied" to the Democratic Senate candidate(s) of their choice. This is a way for a donor to indicate their candidate preference(s) on how they would like their DSCC contribution distributed. Financial support to Senate candidates is determined by the Senators who comprise the Allocation Committee of the DSCC. A candidate's "tallied" contributions are a key criterion considered in the Committee's allocation decisions.

## HOW DO I JOIN THE DSCC SO I CAN "TALLY"?

The DSCC has many donor categories and levels of participation for PAC's and individuals with corresponding benefits for each donor group. All contributions to the DSCC at any donor level may be tallied to specific candidates by the donor.

Paid for and authorized by the Democratic Senatorial Campaign Committee • Contributions are not tax-deductible



pg. b-2

# Funding tactics criticized

By Tom Prevorse  
Capital Bureau

ALBANY — Sen. Alfonse D'Amato, who has been dogged by allegations that his fund-raisers have benefited financially by having him in office, is stepping up his criticism of Robert Abrams' money-raising tactics in the U.S. Senate race.

Citing a Times Union article, D'Amato contended Abrams on a New York City radio show Thursday, questioning whether the state attorney general encouraged campaign contributors to violate federal election laws. D'Amato said if the article was true, Abrams' campaign "will be involved in a money-laundering operation."

D'Amato isn't alone in raising this complaint. Republican candidates in four other states have formally asked the Federal Election Commission to investigate similar activity by their Democratic opponents.

A new campaign disclosure law complicated and often loophole-riddled process by which donors can try to use the political parties' congressional campaign committees to funnel more money to candidates than the law allows. In this case, for instance, the Republicans are suggesting that Abrams' backers may be illegally contributing to his campaign by "earmarking" donations to the Democratic Senatorial Campaign Committee in Washington.

Federal election laws allow contributors to donate a maximum of \$1,000 to any candidate. They can give an additional \$20,000 to the party's senate campaign committee. Donors can't tell the committee, however, to "earmark" their money for a specific candidate.

The Times Union two weeks ago reported that Abrams' supporters are trying to convince donors to give both to his own election committee as well as to the national committee.

There is nothing illegal about Abrams' fund-raisers getting people to give to the committee, a route Democratic and Republican candidates use nationwide. The issue D'Amato is raising is whether Abrams' campaign has stepped over the line, by having "mixed-out" contributors — those who have already given him \$1,000 — send additional

money to the national committee with the understanding Abrams will receive it.

The \$1,000 limit on individual donations to Abrams is supposed to be just that — a limit. If a donor gives \$10,000 to the Washington group with the understanding that the money will be turned over to Abrams, that means that individual has contributed \$11,000 to Abrams — or \$10,000 over the limit.

In practice, owing to the secretive nature in which fund-raisers do their work, the law becomes murky. For example, could a campaign simply imply to a mixed-out donor that their contribution to the national committee would end up back in Abrams' camp? "Our commissioners would have to look at that on an individual case," said Fred Elland, a spokesman at the Federal Elections Commission. The FEC has received complaints from the National Republican Senatorial Committee, charging Democrats in California,

North Carolina, Oklahoma and Pennsylvania with trying to skirt the "earmarking" provision.

Abrams, whose campaign had \$197,000 on hand as of Sept. 30, earlier this week said the national committee sends money to his campaign solely at its own discretion. "We can encourage the (national committee) to keep an eye on contributions from New York."

Ethan Goto, Abrams' top aide, recently said, "You try to get people to contribute to the party committee and they typically will credit that to your campaign."

On Thursday, Abrams' chief fundraiser, Lawrence Buttenwieser, was asked why the attorney general's donors should also give to the national committee. "Because it's a legitimate device for the supporters of a Senate campaign," he said.

Buttenwieser acknowledged some Abrams' donors also give to the national committee in the belief that their money will go to help their

candidate, because it is the state's "habit" to funnel into the state where the said donors are told substantial likelihood sent to the committee. York will end up in Al campaign coffers.

Asked how the national committee knows a contribution from an Abrams supporter, Buttenwieser said the group look at the return address. But he said money marked.

Nehi Horton, a spokesman for the national committee, said donations cannot be earmarked. "The committee does not 'dispute' from telling us what have an interest in." If information is used "as a secondary consideration" in making our allocations.

"Al D'Amato is among the people who are asking anyone's fund-raising beyond the pole."

EXHIBIT 2



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

October 23, 1992

Jay Velasquez, Esquire  
National Republican Senatorial Committee  
425 Second Street, NE  
Washington, DC 20002

RE: MUR 3658

Dear Mr. Velasquez:

This letter acknowledges receipt on October 16, 1992, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Abrams '92 and Ethan M. Geto, as treasurer, and the Democratic Senatorial Campaign Committee and Thomas J. Lehner, 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 3658. 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.

Sincerely,

*T. Hennessy (AK)*

Teresa A. Hennessy  
Assistant General Counsel

Enclosure  
Procedures

95043690124



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 23, 1992

Ethan M. Geto, Treasurer  
Abrams '92  
130 East 40th Street  
10th Floor  
New York, NY 10016

RE: MUR 3658

Dear Mr. Geto:

The Federal Election Commission received a complaint which indicates that Abrams '92 ("Committee") 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 3658. 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 the Committee and you, as treasurer, 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.

95043690125

Ethan M. Geto, Treasurer  
Abrams '92  
Page 2

If you have any questions, please contact Mary P. Mastrobattista, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Handwritten signature of Teresa A. Hennessy in cursive, with the initials (AK) at the end.

Teresa A. Hennessy  
Assistant General Counsel

Enclosures

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

cc: Robert Abrams

95043690126



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 23, 1992

Thomas J. Lehner, Treasurer  
Democratic Senatorial Campaign Committee  
430 South Capitol Street, SE  
Washington, DC 20003

RE: MUR 3658

Dear Mr. Lehner:

The Federal Election Commission received a complaint which indicates that the Democratic Senatorial Campaign Committee ("Committee") 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 3658. 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 the Committee and you, as treasurer, 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.

95043690127

Thomas J. Lehner, Treasurer  
Democratic Senatorial Campaign Committee  
Page 2

If you have any questions, please contact Mary P. Mastrobattista, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

*T. Hennessy (JER)*

Teresa A. Hennessy  
Assistant General Counsel

Enclosures

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

95043690123

## PERKINS COIE

RECEIVED  
FEDERAL ELECTION COMMISSIONA LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATION  
607 FOURTEENTH STREET N.W. • WASHINGTON, D.C. 20005-2011 • (202) 628-6600

82 OCT 30 PM 4:45

October 30, 1992

Mary P. Mastrobattista  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: MUR 3658 - Democratic Senatorial Campaign  
Committee

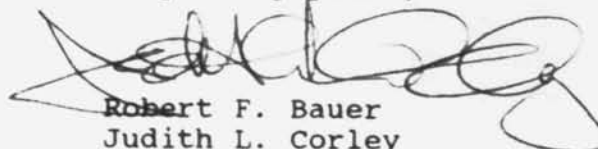
Dear Ms. Mastrobattista:

Enclosed is a designation of counsel for the Democratic Senatorial Campaign Committee in the above-referenced Matter Under Review.

For the reasons stated in our letters of October 7 and October 23, we request that this MUR be consolidated with MURs 3617, 3620 and 3653. All of these MURs are related to the same issue and are virtually identical in substance as well as form.

If you have any questions or need additional information, please contact one of the undersigned.

Very truly yours,



Robert F. Bauer  
Judith L. Corley  
Counsel to Respondents

JLC:jlc



STATEMENT OF DESIGNATION OF COUNSEL

MUR 3658

NAME OF COUNSEL: Robert F. Bauer and Judith L. Corley, Perkins Coie

ADDRESS: 607 14th Street, NW, Suite 800  
Washington, DC 20005  
\_\_\_\_\_

TELEPHONE: ( 202 ) 628-6600

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.

10/28/92  
Date

  
Signature

RESPONDENT'S NAME: Democratic Senatorial Campaign Committee

ADDRESS: 430 South Capitol Street, SE  
Washington, DC 20003  
\_\_\_\_\_

TELEPHONE: HOME ( \_\_\_\_\_ ) \_\_\_\_\_

BUSINESS ( 202 ) 224-2447

95043690130



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

November 2, 1992

Robert F. Bauer, Esq.  
Perkins Coie  
607 14th Street, N.W.  
Washington, D.C. 20005-2011

RE: MUR 3658  
Democratic Senatorial Campaign  
Committee and Thomas J. Lehner,  
as treasurer

Dear Mr. Bauer:

This is in response to your letter dated October 30, 1992, which we received that same day requesting that MURs 3617, 3620, 3653 and 3658 be consolidated into one matter. Your request will be presented to the Commission after responses to the complaints in these matters have been filed. You will be notified as soon as the Commission makes a determination regarding your request to consolidate these four matters.

If you have any questions, please contact me at  
(202) 219-3400.

Sincerely,

A handwritten signature in cursive script, reading "Mary P. Mastrobattista".

Mary P. Mastrobattista  
Attorney

95043690131

# National Republican Senatorial Committee

SENATOR PHIL GRAMM  
CHAIRMAN

JEB HENSARLING  
EXECUTIVE DIRECTOR

October 29, 1992

Teresa A. Hennessy, Esq.  
Assistant to General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

RE: MUR 3658

Dear Ms. Hennessy:

The attached copy of an October 29, 1992 article from The Albany Times Union newspaper is submitted as additional information in MUR 3658.

The article states how certain contributors made contributions to the DSCC with the expectation that the DSCC would "tally" the funds and give those funds to a designated candidate.

The complaint which is the subject of MUR 3658 involved a scheme of tallying contributions for a clearly identified candidate for federal office. This newspaper article lends further evidence that that scheme was conducted in contravention of federal law.

The above is true and correct to the best of my knowledge, information and belief.

Respectfully,

*Jay Velasquez*  
Jay Velasquez  
Legal Counsel  
on behalf of the NRSC

Sworn to and subscribed  
before me this 29 day of October, 1992.

*Lane C. Guiler*  
Notary Public

Lane C. Guiler  
Notary Public, District of Columbia  
My Commission Expires July 14, 1997

RONALD REAGAN REPUBLICAN CENTER  
425 SECOND STREET, N.E. • WASHINGTON, D.C. 20002 • (202) 675-6000

PAID FOR AND AUTHORIZED BY THE NATIONAL REPUBLICAN SENATORIAL COMMITTEE

92 NOV -2 PM 4:15

NOV 2 11 43 AM '92

95043690132

# Donors acknowledge Abrams got indirect contributions

By Tom Precious  
Capital Bureau

ALBANY — Contributors to Robert Abrams' Senate campaign acknowledged that they gave to a Democratic committee in Washington with the understanding that their money would be funneled back to Abrams, a practice Republicans insist violates federal campaign laws.

The contributors, all of whom had already given Abrams the legal limit of \$1,000 for the general election, donated up to \$20,000 to the Democratic Senatorial Campaign Committee with either the understanding or expectation that their money would then be sent to Abrams. Abrams has spent much of his time trying to raise campaign funds, and had far less cash to spend than his opponent, Sen. Alfonse D'Amato.

**"It was simply a way I could support, more completely, Bob's efforts."**

**Fred Hochberg**  
president of Lillian Vernon company

In two cases, donors said they gave money to the committee upon advice from the Abrams' campaign.

Abrams' fund-raising methods have been "100 percent straightforward, 100 percent legal and 100 percent appropriate," said campaign manager John Burke.

Federal law prohibits a national committee like the Democratic Senatorial Campaign Committee from earmarking funds for a specific candidate using donations from mazed-out contributors because that allows them to sidestep the \$1,000 limit. Republicans have filed complaints with the Federal Election Commission against the campaign committee and five Democratic Senate candidates, including Abrams, charging them with violating donation limits in that matter.

"It was simply a way I could support, more completely, Bob's efforts," said Fred Hochberg, president of Lillian Vernon, a Westchester County-based mail order catalog company. Hochberg, already a mazed-out Abrams contributor, gave \$4,000 to the campaign committee 14 days after Abrams' Sept. 15 primary win.



Asked why he expected that his contribution would go to Abrams, Hochberg said he was "told that you can give to Abrams and to the (campaign committee) and ask that they can tally that money for a particular candidate."

Hochberg said he was informed of  
Please see ABRAMS A-12

Continued from A-1

## ABRAMS: Donors gave money indirectly

the practice in conversations with representatives of Abrams' campaign and the Democratic National Committee. "They said I could leave it to the (senatorial campaign committee's) discretion or 'tally it.' That's the term they used."

"You simply tell them to tally it for Bob Abrams... or any particular race you want the funds to be used for," Hochberg said.

Another maxed-out Abrams donor, Ronald Stanton, gave the committee \$20,000 — the legal limit — just a week after the September primary. "I gave with the full expectation that the money would go to help (Abrams)," said Stanton, chief executive officer of Transamonia Co., a chemical shipping and trading firm in Manhattan.

Asked how he had that expectation, Stanton said, "Well, I've been involved in other campaigns and that's just the way things seem to work." He said he did not specifically ask the committee to earmark his \$20,000 to Abrams, but it is clear that the committee knows he supports Abrams. "I think it was a given," he said, declining to elaborate.

A third maxed-out Abrams contributor, who spoke on the condition that his name not be used, said he gave to the committee with the specific understanding that his donation would be used to help Abrams.

"I was advised by the Abrams people," the donor said. The committee knew the donor was an Abrams backer because he wrote the check out to the Democratic Senatorial Campaign Committee, then handed it over to the Abrams campaign, which in turn mailed his check and others to the Washington

committee — a procedure Abrams fund-raisers have already acknowledged they use.

It is common for maxed-out contributors to give to a party committee with the possibility that the committee will in turn help the candidate they support. However, a spokesman for the Federal Election Commission said federal law prohibits maxed-out contributors from telling the committee to spend their donation on their candidate.

Under a federal formula, Abrams is eligible for about \$1.5 million in Senate campaign committee money, which can be spent by the committee to pay for such things as advertising and polling. The committee also can give \$17,500 directly to Abrams, and has already done so.

Since the primary, according to federal records, more than \$450,000 was given to the committee by Abrams' deep-pocket backers. The committee, in turn, gave Abrams about \$700,000.

Abrams officials said no "earmarking" of funds was conducted. They said the committee keeps track of a donor's address and preferred candidate but no one can specifically tell the committee how to spend its money. Chief among considerations is how close a race is and whether the Democratic candidate can win, Burke said.

"Of course potential contributors were told a number of ways they could help Bob," Burke said. "Contributors were certainly told the DSCC was keeping a tally and they were going to tally their money. But if a maxed-out contributor says, 'Here's my money, I only want it to go to Abrams and no one else,' the DSCC will return their check. If a

contributor says, 'Here's my check and chalk it up to the tally for the Abrams race,' that's absolutely legal."

Fred Eiland, the Federal Election Commission spokesman, would not comment on the legality of the practice. "If someone brings a complaint... then the six commissioners would look at it and make a determination," he said.

Earlier this month, citing a Times Union article that first revealed that the Abrams campaign was trying to persuade maxed-out donors to give to the Senate campaign committee, D'Amato accused Abrams of running "a money-laundering operation."

Other leading Abrams donors said they had no guarantee that their contribution to the committee would end up with Abrams. "I assumed that the (committee) is going to be helpful to all Senate candidates, including Bob. It is my hope and expectation that they will use some of those funds for Bob," said Steven Kumble, chairman of Lincolnshire Management, a Manhattan investment firm, who gave the committee \$7,500 on Sept. 30.

Another Abrams backer, Eileen Weizer of Florham Park, N.J., gave \$2,500 to the committee. When asked why she gave to both, she said, "You'll have to talk to my husband. He is the one that does the contributing."

Both candidates have faced scrutiny for their fund-raising practices. The latest revelations come after D'Amato has already been criticizing Attorney General Abrams for taking donations from lawyers who do business before the attorney general's office.





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 4, 1992

Ethan M. Geto, Treasurer  
Abrams '92  
130 East 40th Street  
10th Floor  
New York, NY 10016

RE: MUR 3658  
Abrams '92 and Ethan M. Geto,  
as treasurer

Dear Mr. Geto:

On October 23, 1992, you were notified that the Federal Election Commission received a complaint from the National Republican Senatorial Committee alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On November 2, 1992, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

If you have any questions, please contact me at  
(202) 219-3400.

Sincerely,

*Mary P. Mastrobattista*

Mary P. Mastrobattista  
Attorney

Enclosure

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SKADDEN, ARPS, SLATE, MEAGHER & FLOM

1440 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20005-2107

(202) 371-7000

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FAX: (202) 393-5760

DIRECT DIAL  
(202) 371-

November 4, 1992

BY HAND

Teresa A. Hennessy  
Assistant General Counsel  
Federal Election Commission  
999 E Street, Northwest  
Washington, D.C. 20463

Re: MUR 3658

Dear Ms. Hennessy:

Enclosed is an executed Statement of  
Designation of Counsel for Abrams '92 and Ethan Geto, as  
treasurer, the Respondents in Matter Under Review 3658.  
Please date-stamp the extra copy for our records.

Sincerely,

*Kenneth A. Gross*  
Kenneth A. Gross

Enclosure

92 NOV -5 AM 10:21

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 3658

NAME OF COUNSEL: Kenneth Gross

ADDRESS: Skadden Arps Slate Meagher & Flom  
1440 New York Avenue, N.W.  
Washington, D.C. 20005-2107

TELEPHONE: (202) 371-7000

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.

10-29-90  
Date

Ethan M. Goto  
Signature

RESPONDENT'S NAME: Ethan M. Goto

ADDRESS: Treasurer, Abrams '92  
130 East 40th Street  
N.Y. N.Y. 10016

TELEPHONE: HOME (212) 929-7417

BUSINESS (212) 606-4551

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FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE

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## SKADDEN, ARPS, SLATE, MEAGHER &amp; FLOM

1440 NEW YORK AVENUE, N.W.  
WASHINGTON, D.C. 20005-2107

FAX: (202) 393-5700

DIRECT DIAL  
(202) 371-7000

(202) 371-7000

November 13, 1992

VIA FAX

Teresa A. Hennessy  
Assistant General Counsel  
Federal Election Commission  
999 E Street, Northwest  
Washington, D.C. 20463

Re: MUR 3658  
Abrams '92

Dear Ms. Hennessy:

In our recent conversation, I requested a twenty day extension of time to respond to the notice of complaint in the above referenced matter. As you know, the campaign ended last week, and it is difficult to conduct the necessary discussions with campaign staff so soon after the conclusion of the campaign.

In order to provide time to respond to allegations properly, we will need twenty additional days to respond. We filed our Designation of Counsel on November 4, 1992. If our extension is granted, our response would be due on December 9, 1992.

Sincerely,

  
Kenneth A. Gross

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 19, 1992

Kenneth A. Gross, Esq.  
Skadden, Arps, Slate, Meagher & Flom  
1440 New York Ave., N.W.  
Washington, D.C. 20005-2107

RE: MUR 3658  
Abrams '92 and Ethan M.  
Geto, as treasurer

Dear Mr. Gross:

This is in response to your letter dated November 13, 1992, which we received that same day, requesting an extension of twenty days to respond to the complaint filed against your clients. After considering the circumstances presented in your letter, the Office of the General Counsel has granted your requested extension of twenty days.

However, you indicate in your letter that your response would be due on December 9, 1992 if the request for an extension is granted. The response to the complaint originally was due on November 10, 1992. Thus, given the twenty day extension, your response is now due by the close of business on November 30, 1992.

If you have any questions, please contact me at  
(202) 219-3400.

Sincerely,

A handwritten signature in cursive script, reading "Mary P. Mastrobattista".

Mary P. Mastrobattista  
Attorney

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SKADDEN, ARPS, SLATE, MEAGHER & FLOM

1440 NEW YORK AVENUE, N.W.  
WASHINGTON, D.C. 20005-2107

(202) 371-7000

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CONFIDENTIAL

December 1, 1992

BY HAND

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

ATTN: Mary P. Mastrobattista, Esq.

Re: MUR 3658  
Abrams '92 and Ethan Geto, as treasurer

Dear Mr. Noble:

This letter is in response to the complaint submitted by the National Republican Senatorial Committee ("NRSC") alleging that Abrams '92 and Ethan Geto, as treasurer, violated 2 U.S.C. § 441a(f) for accepting excessive contributions. The NRSC alleges that Abrams'92 received excessive contributions from individual contributors because of its role in raising contributions for the Democratic Senatorial Campaign Committee ("DSCC"). As the basis for its allegation, the NRSC claims that Abrams' supporters earmarked contributions made to the DSCC for use on behalf of Abrams'92 through the so-called "tally" program.

I. Abrams Properly Solicited Funds for the DSCC.

As sworn to in the attached affidavit of Marybeth Pearlberg,\* the Finance Director of Abrams'92,

\* The attached affidavit is signed but, inadvertently, was not sworn to before a notary public. A sworn to affidavit will be submitted under separate cover.

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Lawrence M. Noble, Esq.  
December 1, 1992  
Page Two

the campaign's fundraisers informed potential contributors that their contributions to the DSCC would not necessarily be used to help Abrams '92. (Pearlberg affidavit at 1). Abrams' supporters who were solicited for contributions to the DSCC were told that the amount of funds the Abrams' campaign was able to raise for the DSCC would be taken into consideration as part of the DSCC's evaluation of how much money it would spend on behalf of the Abrams' campaign. Other factors, however, such as the closeness of the race and the campaign's need for the money would also be taken into consideration. (Pearlberg affidavit at 2).

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The quote by Ethan Geto in a newspaper article submitted by the complainant as "evidence" of wrongdoing, does not even suggest a violation of law. Mr. Geto, who was not involved in the campaign's fundraising activities, merely stated that the party committee would "typically" credit the funds raised to the candidate's campaign. The fact that funds raised are typically credited to a campaign is consistent with what the Abrams' fundraisers told solicitees when raising funds for the DSCC. Specifically, the solicitees were told that there was no guarantee that the funds they contributed to the DSCC would be used on behalf of the Abrams' campaign. (Pearlberg affidavit at 1). Also, merely crediting the contributions raised to the Abrams' campaign does not necessarily mean that the credited funds will be spent on behalf of the Abrams' campaign. Crediting is one thing, spending is another.

## II. The DSCC's Tally Program Is Legal.

The Commission's regulations provide that a contribution is not earmarked unless a contributor places an encumbrance on the contribution which results in all or part of the contribution being spent on behalf of a candidate. 11 C.F.R. § 110.6(b)(2). Merely providing a notation with a contribution which indicates that it was solicited for a particular candidate's "tally" does not constitute an encumbrance. The DSCC could and did spend its tallied contributions in whatever fashion it wished to spend those funds. In fact, the DSCC specifically informed Ms. Pearlberg that it did not accept earmarked



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Lawrence M. Noble, Esq.  
December 1, 1992  
Page Three

contributions and Ms. Pearlberg and her staff so informed contributors of the DSCC's policy. (Pearlberg affidavit at 2-3).

Moreover, in MUR 377, the Commission voted to take no action against a candidate and a party committee that raised funds in a fashion similar to the way funds were raised in this case. In MUR 377, the party committee held a fundraising event on behalf of a candidate and the party committee solicited the funds with the express purpose of retiring the candidate's debt under its 2 U.S.C. § 441a(d) authority. In this case, as in MUR 377, the party committee could have spent the funds "tallied" on behalf of the Abrams' campaign in any fashion it desired. In MUR 377, the Commission did not find a violation occurred even though the contributions made to the party committee were made with the knowledge that the funds would likely be used to retire the debt of a particular candidate.

Since the dismissal of MUR 377, the Commission has not issued a further ruling on the activity which was investigated in that MUR. Moreover, in MUR 377, the Commission directed the Office of the General Counsel to draft regulations addressing the issues raised in that case, but the Commission has proposed no such regulations or clarifications.

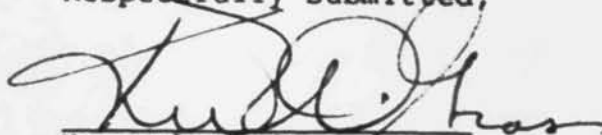
### III. Summary

It is permissible for a candidate to raise funds in support of his party. The so-called "tally" program, as it operated in the case of the Abrams' campaign, did not constitute earmarking, binding the party committee to give a contribution to or make an expenditure on behalf of a particular candidate. If the Commission wants to impose additional rules in this special area of fundraising involving a party committee's spending authority, then it should renew its request to its General Counsel to draft proposed regulations and receive comments through the regulatory process.

Lawrence M. Noble, Esq.  
December 1, 1992  
Page Four

For these reasons, the Commission should find  
no reason to believe that Abrams '92 and Ethan Geto, its  
treasurer, violated the law.

Respectfully submitted,



Kenneth A. Gross  
Skadden, Arps, Slate,  
Meagher & Flom  
1440 New York Avenue, N.W.  
Washington, DC 20005

Attorneys for Abrams '92 and  
Ethan Geto, as treasurer

Attachment

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AFFIDAVIT  
of  
MARY BETH PEARLBERG

NEW YORK  
NEW YORK

1. I am the Finance Director of Abrams '92 and have held that position since January 1, 1992. Prior to that date, I was, from the inception of the campaign, Deputy Finance Director of Abrams '92.

2. As Finance Director of Abrams '92, I conducted or supervised the raising of campaign contributions by the campaign.

3. Abrams '92 fundraisers informed solicitees that the most beneficial way they could help the campaign was to give to Abrams '92. In addition, if they chose to, or if they had given the maximum amount to Abrams '92, they could also give to the Democratic Senatorial Campaign Committee ("DSCC").

4. In soliciting contributions on behalf of the DSCC, I instructed all solicitees that their contributions to the DSCC would not necessarily be used to help Abrams '92. I further stated that DSCC funds may be used on behalf of many Democratic Senate candidate.

5. I informed solicitees that if the DSCC chose to spend money on behalf of Abrams '92, it would

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likely be spent on television and radio advertising.

6. I informed individuals who chose to contribute funds to the DSCC to notify the DSCC that they supported Bob Abrams. In that way, the DSCC would know to list the contributions on the so-called "tally," which recognizes that the contributions came from Abrams '92 supporters.

7. I informed solicitees that their contributions to the DSCC could not be earmarked for use on behalf of Abrams '92.

8. All instructions that I received from the DSCC came from either Steve Richetti or Robert Hickmott.

9. The DSCC informed me that the amount of contributions that are tallied to the Abrams' campaign would be taken into consideration as one of many factors in deciding how much money the DSCC would spend on behalf of the Abrams' campaign.

10. The DSCC informed me that the other factors that would be taken into consideration in deciding how much money the DSCC spends on behalf of a candidate are 1) whether the candidate has a reasonable chance of winning the election; 2) whether a candidate is in a close race; 3) whether the candidate has raised a lot of money on his own and whether the need for additional

funds is great; and 4) whether the candidate has assisted the DSCC in its fundraising efforts.

11. The DSCC informed me that it does not accept earmarked contributions.

12. All fundraisers for Abrams '92 were carefully instructed to conduct their fundraising efforts in the same fashion that I conducted fundraising, as set forth in this affidavit.

*Mary Beth Pearlberg*  
Mary Beth Pearlberg

Sworn to and subscribed before me  
this <sup>4</sup>th day of ~~November~~ December 1992.

*Mary H. Bordes*  
Notary Public

MARY H. BORDES  
Notary Public, State of New York  
No. 31-5002899  
Qualified in New York County  
Commission Expires Oct. 13, 1994

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

**FIRST GENERAL COUNSEL'S REPORT**

**MUR: 3617, 3620, 3658**  
**STAFF ATTORNEY: Mary Ann Bumgarner**

**DATE COMPLAINTS FILED:**  
MUR 3617: 9/22/92  
MUR 3620: 9/24/92  
MUR 3658: 10/16/92

**DATES OF NOTIFICATION:**  
MUR 3617: 9/29/92  
MUR 3620: 9/29/92  
MUR 3658: 10/23/92

**DATE ACTIVATED: 12/28/93**

**COMPLAINANTS:**

MUR 3617: Seymour for U.S. Senate  
MUR 3620  
& 3658: National Republican Senatorial Committee

**RESPONDENTS:**

MUR 3617: Feinstein for Senate Committee and  
Michael J. Barrett, as treasurer  
MUR 3620: Feinstein for Senate Committee and  
Michael J. Barrett, as treasurer  
Democratic Senatorial Campaign Committee and  
Donald J. Foley, as treasurer  
Yeakel for Senate Committee and  
Sidney D. Rosenblatt, as treasurer  
Sanford for Senate Committee and  
Alton G. Buck, as treasurer  
MUR 3658: Abrams Committee, f/k/a Abrams '92 Committee  
and Lawrence B. Battenwieser, as treasurer

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RELEVANT STATUTES AND REGULATIONS: 2 U.S.C. § 441a(a)(1)(A)  
2 U.S.C. § 441a(a)(1)(B)  
2 U.S.C. § 441a(a)(8)  
2 U.S.C. § 441a(d)  
2 U.S.C. § 441a(f)  
11 C.F.R. § 102.8  
11 C.F.R. § 110.1(h)  
11 C.F.R. § 110.6(b)(2)  
11 C.F.R. § 110.6(b)(2)(iii)  
11 C.F.R. § 110.6(c)(1) and (2)  
11 C.F.R. § 110.6(d)  
11 C.F.R. § 110.7(b)(1)  
11 C.F.R. § 110.7(b)(2)(i)  
11 C.F.R. § 110.7(b)(4)

INTERNAL REPORTS CHECKED: Disclosure Reports;  
FEC Indices

FEDERAL AGENCIES CHECKED: None

**I. GENERATION OF MATTER**

These cases arise from three complaints filed with the Federal Election Commission ("Commission") during the 1992 election cycle. At issue is whether certain contributions made to the Democratic Senatorial Campaign Committee ("DSCC") were earmarked for a particular candidate. Because these cases concern the same issue, they are treated in one report.

The complaints challenge the DSCC's "tally system," an accounting method used to keep track of the total funds raised for the DSCC by a particular candidate. The complaints allege that during the 1992 Senate race, the DSCC accepted contributions designated for a specific candidate's tally account, which contributions were allegedly "passed through" to the designated candidate in the form of coordinated party expenditures. The complainants charge that this practice violates 2 U.S.C. § 441a(a)(8), which mandates that an "earmarked" contribution made through an intermediary be treated as a contribution from the

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donor to the candidate, and 11 C.F.R. § 110.6(c)(1)(i), which requires that the intermediary of an earmarked contribution disclose the source of the contribution and the recipient candidate. The complaints further allege that by receiving coordinated party expenditures from the DSCC, four Democratic Senate candidates accepted excessive contributions from donors who had already made the maximum allowable direct contributions to their campaigns (informally referred to by the Respondents as "maxed-out" or "max-out" contributors), or from donors who had not "maxed out," but whose "tallied" contributions to the DSCC exceeded the statutory maximum for contributions from an individual to a candidate's committee.

In response, the DSCC and the Democratic Senate candidates deny the allegations, explaining that the tally system is an information-gathering tool designed to enable the DSCC to keep track of the funds raised for the DSCC by a particular candidate. The Respondents further explain that the tally total, in turn, is only one of several factors the DSCC considers when determining how to make coordinated expenditures on behalf of the various Democratic Senate candidates, as authorized by 2 U.S.C. § 441a(d). According to the Respondents, the candidate committees are aware that tallied contributions are not passed through to the designated candidates. Moreover, they submit that the DSCC retains absolute discretion to decide on whose behalf it will make the coordinated party expenditures. For these reasons, the Respondents argue that tallied contributions are not earmarked.

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Moreover, as part of its response, the DSCC charges that the National Republican Senatorial Committee and the Coverdell for Senate Committee (the "Coverdell campaign") engaged in the same type of fundraising practice. In support, the DSCC submits a solicitation from the Coverdell campaign promoting the NRSC's fundraising program known as the "Senatorial Trust."

## II. FACTUAL AND LEGAL ANALYSIS

### A. The Act

The Federal Election Campaign Act of 1971, as amended, ("the Act") establishes dollar limits on contributions to candidates for Federal office. An individual may not contribute to a candidate (and the candidate's authorized committees) more than \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). In addition, an individual may contribute up to \$20,000 per calendar year to political committees established and maintained by a national political party that are not the authorized political committees of any candidate. 2 U.S.C. § 441a(a)(1)(B). The Act further provides that a candidate may not knowingly accept, and a political committee may not knowingly make, a contribution or expenditure in violation of the provisions of the Act. 2 U.S.C. § 441a(f).

A contribution made by a person, either directly or indirectly, on behalf of a particular candidate, which is in any way earmarked or otherwise directed through an intermediary or conduit is treated as a contribution from such person to the candidate. 2 U.S.C. § 441a(a)(8). "Earmarked" means "a designation, instruction, or encumbrance, whether direct or

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indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee." 11 C.F.R. § 110.6(b)(1).

A "conduit" or "intermediary" means any person who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee (with certain exceptions not applicable here). 11 C.F.R. § 110.6(b)(2). In addition, 11 C.F.R. § 110.6(b)(2)(iii) provides that any person who receives an earmarked contribution shall, among other requirements, forward such earmarked contribution to the candidate or authorized committee in accordance with 11 C.F.R. § 102.8. That section, in turn, mandates that every person who receives a contribution for an authorized political committee shall, no later than 10 days after receipt, forward such contribution to the committee's treasurer. 11 C.F.R. § 102.8.

Furthermore, the intermediary or conduit of an earmarked contribution must report the source of the contribution and the intended recipient to the Federal Election Commission and to the intended recipient. 2 U.S.C. § 441a(a)(8). See also 11 C.F.R. § 110.6(c)(1). Similarly, the recipient candidate committee must report earmarked contributions and each conduit or intermediary who forwards one or more earmarked contributions which in the aggregate exceed \$200 in any calendar year in accordance with 11 C.F.R. § 110.6(c)(2).

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11 C.F.R. § 110.1(h) concerning "contributions to committees supporting the same candidate" provides that:

A person may contribute to a candidate or his or her authorized committee with respect to a particular election and also contribute to a political committee which has supported, or anticipates supporting, the same candidate in the same election, as long as --

(1) The political committee is not the candidate's principal campaign committee or other authorized political committee or a single candidate committee;

(2) The contributor does not give with the knowledge that a substantial portion will be contributed to, or expended on behalf of, that candidate for the same election; and

(3) The contributor does not retain control over the funds.

In addition, the Act authorizes the national and state committees of a political party to make additional expenditures in support of that party's candidates for federal office:

Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, . . . may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2) and (3) of this subsection.

2 U.S.C. § 441a(d)(1).

Paragraph (2) of this subsection applies to Presidential candidates and is not relevant here. Paragraph (3), which concerns candidates for Senate, provides that the national and State committees of a political party may each make expenditures which do not exceed the greater of \$20,000 or two cents multiplied by the voting age population of the State. See 2 U.S.C.

§ 441a(d)(3)(A) and 11 C.F.R. §§ 110.7(b)(1) and (b)(2)(i). These

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expenditures are generally referred to as "441a(d) expenditures" or "coordinated party expenditures." If a state party committee chooses not to make the expenditures permitted by section 441a(d), it may designate an agent, such as a national committee of the party, to make coordinated party expenditures on its behalf. FEC v. Democratic Senatorial Campaign Comm., 454 U.S. 27 (1981). The national committees are not capable of making independent expenditures in connection with the general election campaign of a candidate for Federal office. 11 C.F.R. § 110.7(b)(4).

**B. The Complaints**

**1. MURs 3620 and 3617**

MUR 3620, filed by the National Republican Senatorial Committee ("NRSC"), claims that the DSCC received contributions "earmarked" for a specific candidate, but the DSCC failed to properly report them, as required by law. It further alleges that the Feinstein for Senate Committee (the "Feinstein campaign"), the Yeakel for Senate Committee (the "Yeakel campaign"), and the Sanford for Senate Committee (the "Sanford campaign") accepted excessive contributions which were "channeled" through the DSCC as coordinated party expenditures (Attachment A-1.) In support, the complainant submitted eight exhibits, six with the original complaint, and two additional documents with a supplement to the complaint.

The first three exhibits are solicitations and memoranda from the DSCC. Exhibit one is an invitation from the DSCC to

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contributors for an event entitled "U.S. Senate Campaign Countdown," which is described as a:

special conference designed to provide strategic information on the 1992 U.S. Senate campaigns followed by a special program of cocktails, dinner and breakfast at the private homes of Senators Kennedy, Robb and Rockefeller.

The invitation goes on to discuss the DSCC's tally system:

The Campaign Countdown is designed for a Senate campaign's max-out donors and top contributors who are interested in further supporting their candidates through the DSCC's tally system. The DSCC provides donors with the opportunity to tally their contributions to the Democratic Senate nominees of their choice. The program is designed for donors who would like to tally \$10,000 or more in new money to their preferred Senate candidate(s) and who would like to join one of the DSCC's elite donor programs.

(Attachment A-1, p. 5.)

The second exhibit is a memorandum from the DSCC explaining the function of the Democratic Senatorial Campaign Committee in general, and the tally option specifically. It reads, in relevant portion:

#### **The Democratic Senatorial Campaign Committee**

##### **THE TALLY OPTION**

##### **WHAT ROLE DOES THE DSCC PLAY?**

##### **Funding Democratic Senate Nominees**

The primary function of the Democratic Senatorial Campaign Committee is to provide funding for Democratic Senate candidates in their quest for the U.S. Senate. The Finance Staff of the DSCC raises funds which are allocated to targeted Democratic Senate races based on the campaign's need and winability [sic]. These funds provide nominees with an invaluable source of additional funding which helps them keep their competitive edge . . . .

##### **WHY GIVE TO THE DSCC?**

Under FEC regulations, an individual may contribute a maximum of \$2000 to a Senate candidate. (\$1000 in the primary and another \$1000 to a general campaign fund). However, an individual may contribute up to \$20,000

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annually to a political party organization like the DSCC. PAC's may contribute a maximum of \$15,000 annually to the DSCC. The Committee in turn allocates those funds to Democratic Senate candidates who are up for election in the current cycle. An individual (or PAC) is able to make the maximum legal contribution to assist Democratic Senate candidates financially by contributing to the DSCC.

**WHAT DOES "TALLY" MEAN?**

When contributing to the DSCC, a donor may request that his or her contribution be "tallied" to the Democratic Senate candidate(s) of their choice. This is a way for a donor to indicate their candidate preference(s) and how they would like their DSCC contribution distributed. Financial support to Senate candidates is determined by the Senators who comprise the allocation Committee of the DSCC. A candidate's "tallied" contributions are a key criterion considered in the Committee's allocation decisions.

\* \* \*

(Attachment A-1, p. 8.) It is not clear from the record whether this memorandum explaining the "Tally Option" was included with the DSCC's invitation to the "Campaign Countdown" -- or with any other solicitation.

The third exhibit to the NRSC's complaint is a memorandum from the DSCC to "Senate AA's & Campaign Finance Directors" concerning the "Campaign Countdown" program. The relevant portions read:

Please join the DSCC for a special program that will be of great benefit to your Senate campaign.

The program is designed for high dollar and max-out contributors to 1992 Senate campaigns.

On Wednesday afternoon September 9, the DSCC will host a campaign conference covering the latest information on the 1992 Senate races . . . .

That evening, donors and contributors will be invited to a special evening of cocktails at the McLean home of Senator & Mrs. Ted Kennedy (6:30 - 8:00 pm) followed by dinner at the home of Senator & Mrs. Charles S. Robb. The following morning, guests will be invited to

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breakfast at the home of Senator & Mrs. Jay Rockefeller.

The program is specifically designed to encourage max-out and high-dollar contributors to tally \$10,000 or more (per couple) in new money to their preferred Democratic Senate candidate(s).

This is an ideal opportunity for you to cultivate your high dollar prospects and encourage them to support their candidate(s) through the DSCC's tally system.

\* \* \*

(Attachment A-1, p. 10.)

The fourth exhibit is a copy of a fundraising solicitation from the Feinstein campaign in which the candidate urges her maxed-out donors to contribute money to the DSCC to be "credited" to Feinstein's tally account. Specifically, the solicitation invites donors to meet Feinstein and then-Senator Lloyd Bentsen at a fundraising event in a private Beverly Hills home. It reads, in pertinent part:

[Senator Bentsen] has graciously agreed to help us raise money for my account with the Democratic Senatorial Campaign Committee.

The DSCC is a Washington based group set up by U.S. Senators in the Democratic Party to help raise money and support for Democratic U.S. Senate candidates throughout the country. They can accept personal contributions of up to \$20,000 in a calendar year (and within an individual's \$25,000 yearly federal contribution limit). Your contribution to the DSCC can be credited to the Dianne Feinstein account.

I hope you will consider a contribution of at least \$1,000 per person to the DSCC. John Seymour will receive the maximum of \$2.5 million from the Republican Senatorial Campaign Committee. I am hopeful that this evening will be a major fundraising event.

For those of you who have already maxed out to my campaign, the DSCC tally is an avenue through which you can offer more support. For further information regarding your donation to my DSCC account or my campaign, please call Tricia Riffenburgh at [phone number].

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I look forward to seeing you on the 27th.

Warmest regards,

(signed)  
Dianne Feinstein

(Attachment A-1, p. 12.)

Fifth, in support of the allegations against the Sanford for Senate Committee, the NRSC attaches a solicitation from the Sanford campaign which reads, in pertinent part:

**TERRY SANFORD'S CAMPAIGN FOR U.S. SENATE  
and the  
Democratic Senatorial Campaign Committee**

The Democratic Senatorial Campaign Committee (DSCC) works to elect Democratic Senators across the country. One of their tools is financial. The DSCC may accept money above and beyond what a candidate raises. If you have given your personal maximum to a candidate, you may still give additional monies to the DSCC. Individuals may give a total of \$20,000 to the DSCC; Political Action Committees may give up to \$15,000. If specified, such contributions may be "tallied" to Terry Sanford's DSCC tally sheet.

The DSCC will help the Sanford campaign according to need, winability [sic], and our tally sheet total. Terry Sanford's race will be close: the tally sheet will be of vital importance.

\* \* \*

Electing a Democratic majority in the Senate is vital business: Terry Sanford needs to be in that majority. To help him, and to help the DSCC, please make your check to DSCC, and note on it "Sanford Tally Sheet". Then mail your check to Sanford for Senate [address], or to the DSCC office in Washington.

(Attachment A-1, p. 14) (emphasis in original).

The complainant later supplemented the complaint with two documents relating to the Sanford campaign. First is the response card included with the invitation discussed above which reads, in

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part:

Yes, I would like to do my part to keep Terry Sanford and Democrats like him in the U.S. Senate. Please include me in the:

Majority Trust (\$20,000)  
Leadership Circle (\$15,000)  
Business Roundtable (\$5,000)

\* \* \*

(Attachment A-2, p. 3.)

The second document provided in the supplemental complaint is an invitation to a reception honoring Senator Sanford. It reads, in full:

The Democratic Senatorial Campaign Committee  
cordially invites you to a reception  
with Senator George Mitchell, Majority Leader  
United States Senate  
honoring Senator Terry Sanford

Friday, July 24 at five o'clock  
at the home of L. Richardson Preyer  
603 Sunset Drive  
Greensboro, North Carolina

DSCC membership required.

(Attachment A-2, p. 3.)

Finally, the NRSC's last exhibit, attached to the original complaint, is a DSCC invitation for a dinner honoring Lynn Yeakel. It reads, in full:

Norma and Irma Braman  
request the pleasure of your company  
at a dinner honoring

Lynn Yeakel  
Candidate for United States Senate

followed by  
The Philadelphia Eagles vs. The Dallas Cowboys  
Monday evening, the fifth of October

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nineteen hundred and ninety-two

seven o'clock Dinner  
nine o'clock Kickoff

Veterans Stadium  
Philadelphia, Pennsylvania

Contribution \$5,000

RSVP [Phone Number]

Checks payable to "Democratic Senatorial  
Campaign Committee"

The response card accompanying the invitation makes no mention of Lynn Yeakel or the tally system. (Attachment A-1, p. 16.)

Based on these solicitations, the complaint alleges that the DSCC and the Feinstein, Sanford and Yeakel campaigns evaded the statutory limits on campaign contributions by urging their "maxed-out" contributors to make tallied contributions to the DSCC, which were allegedly passed through to the candidates in the form of coordinated party expenditures.

The complaint in MUR 3617, submitted by the Seymour for U.S. Senate Committee, names only the Feinstein for Senate Committee as a Respondent. It alleges that the Feinstein campaign accepted excessive contributions from: (1) its "maxed-out" donors who also made a contribution to the DSCC designated for Feinstein's "tally account;" and (2) donors who had not "maxed-out," but whose tallied contributions exceeded the annual limit on contributions from individuals to a candidate's committee. (Attachment B-1.) In support, the complainant submitted the same invitation to the evening with Senator Bentsen which was proffered by the NRSC in MUR 3620, discussed above. (Attachments A-1, p. 12 and B-1, p. 4). The complainant later supplemented his complaint by

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submitting another solicitation from the Feinstein campaign's "host committee." It reads, in relevant portion:

We are supporting Dianne Feinstein in her bid for the United States Senate. As members of the Bay Area Jewish community, we believe that Dianne Feinstein will serve as an articulate and forceful advocate for a strong United States/Israeli relationship.

\* \* \*

To win the election, Dianne needs our financial assistance.

Please consider joining us on the host committee for a fundraising reception to be held in Dianne's honor . . . .

You may wish to participate as a Benefactor, Patron or Sponsor by contributing or raising \$5,000, \$2,500 or \$1,000 respectively.

As an individual, you can contribute up to \$1,000 directly to the "Feinstein for Senate" Committee. Contributions in excess of \$1,000 must be made payable to the "Democratic Senatorial Campaign Committee" (DSCC) and marked "Feinstein Tally." The DSCC is the mechanism for U.S. Senate Candidates to receive their allocation from the Democratic party and Dianne is eligible to receive \$2.5 million from this committee. Our hope is that thought [sic] this event, we will take advantage of this opportunity to raise significant funds.

\* \* \*

Sincerely,

(signed)  
Henry Berman  
Chair, Host Committee

Enclosed with the invitation is a response card which reads:

Please reserve a space in my name . . . as a:

**BENEFACTOR:**

Enclosed is my check for \$5,000 (payable to the "Democratic Senatorial Campaign Committee" marked for Dianne's tally)

**PATRON:**

Enclosed is my check for \$2,500 (payable to

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the "Democratic Senatorial Campaign Committee" marked for Dianne's tally)

SPONSOR:

Enclosed is my check for \$1,000 (payable to "Feinstein for Senate")

(Attachment B-2, pp. 4-6.)

Based on the language in the two solicitations, the complaint alleges that contributions made to the DSCC for the "Feinstein tally" were earmarked for Feinstein and should have been treated as contributions from the donor to the candidate, as required by 2 U.S.C. § 441a(a)(8). For that reason, the complaint alleges that the Feinstein campaign solicited and accepted excessive contributions in circumvention of the law establishing limits on individual contributions to a candidate's campaign.<sup>1</sup>

2. The Responses (MURs 3620 and 3617)

Broadly stated, the Respondents deny that the tallied contributions were earmarked because they were not "passed through" to the designated candidate. They argue that the designation for a candidate's tally sheet did not restrict the DSCC's discretion to determine where its money could be expended.

a. The DSCC

The DSCC explains that the "Tally Sheet" is an accounting process established to allow the DSCC to keep track of the amount of money raised for the DSCC by a particular candidate.

(Attachment A-3, p. 1.) That total is then taken into

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1. The complainant also sought an injunction preventing the DSCC from spending funds contributed for the "Feinstein tally." The Commission voted to deny the requested relief on October 27, 1992.

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consideration as one of several factors used when the DSCC makes funding decisions for the coordinated party expenditures authorized by 2 U.S.C. § 441a(d). According to the DSCC, tallied contributions are not segregated from other funds. All tallied contributions (and all other contributions) are deposited into the DSCC's general bank accounts and used entirely at the DSCC's discretion. Furthermore, the DSCC states that money tallied for a specific candidate is neither "passed through" to the candidate, nor spent on a dollar-for-dollar exchange for the amount raised by a candidate. On the contrary, it submits that its express policy is to refuse earmarked donations. When it receives a donation that appears to be earmarked, the DSCC sends a form letter intended to clarify the contributor's intent. In support, the DSCC attached two sample form letters. Apart from the fact that the form letters refer to different candidates, the text in the letters is identical. One reads, in part:

Thank you for your contribution to the Democratic  
Senatorial Campaign Committee. . . .

On the check you designate the contribution to Dianne Feinstein. We assume that you intend the "tallying" or crediting of the contribution to Dianne Feinstein, which will be taken into account by DSCC in allocating funds in support of his [sic] re-election. Contributions "tallied" to a Senator are a significant factor in the Committee's allocation decisions.

We note that the amount to be allocated is decided by the DSCC within its discretion. For this reason the DSCC does not treat a contribution such as yours as "earmarked" and does not accept earmarked contributions.

If you have a different expectation about the uses of this contribution, we will promptly refund it to you at your request. Please advise if this is the case.

If you have any questions, please do not hesitate to contact me at (phone number). I appreciate your

cooperation in this matter.

Sincere thanks,

(signed)  
Grace M. Coyle  
Finance Assistant

(Attachment A-3, p. 7.)

According to the DSCC, tallied funds deposited into DSCC accounts are used for any of the DSCC's most pressing expenses, such as administrative expenses or 441a(d) expenditures on behalf of another candidate. The DSCC proffers that there have been candidates who raised large amounts of money for the DSCC, but received little or no 441a(d) funding in return (such as a barely challenged incumbent Senator). (Attachment A-3, p. 2.) In other cases, some candidates who raised little or no money for the DSCC received full funding under the limits established for coordinated party expenditures. (Id.)

The DSCC further proffers that it considers a variety of factors in determining which candidates will receive 441a(d) funding. It looks at:

- Whether the race is winnable;
- Whether the candidate has a serious challenger;
- Whether the candidate has been successful in raising funds for his or her own campaign;
- Whether the candidate has assisted the DSCC in its fundraising efforts;
- Whether the DSCC has more pressing expenditures that must be made. (Id. at 2-3.)

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According to the DSCC, these criteria have been repeatedly emphasized to contributors and candidates. It contends that, "the significance of the tally, in short, is its role as an incentive to its candidates to support its fundraising efforts." (Id. at 3.)

Next, the DSCC argues that to view the tally system as earmarking would significantly weaken the national party's role as a source of funding for its candidates. It emphasizes the special spending authority, far in excess of the limits applicable to contributions from individuals, conferred on national party committees by section 441a(d). In 1992 in California, for example, the coordinated expenditure limits for National and State party committees for Senate candidates were approximately \$1.2 million each.<sup>2</sup> The DSCC argues that it cannot reasonably be expected to raise millions of dollars without the assistance of the Senate candidates it is authorized to fund.

The DSCC further contends that the National Republican Senatorial Committee engages in the same type of fundraising practice challenged in the complaints. (Id. at 3, n.1.) As evidence, it submits a solicitation dated October 9, 1992, from Republican Senate candidate Paul Coverdell. The solicitation reads, in part:

I tried to contact you by phone to update you on our campaign to unseat Democrat Senator Wyche Fowler of Georgia.

A recent poll by the Senatorial Committee indicates that Fowler is extremely vulnerable in this anti-incumbent election year. . . .

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2. FEC Record, Volume 18, Number 3 (March, 1992) at 4.

\* \* \*

This has led to the Senatorial Committee fully funding the race and putting over \$500,000 into the campaign for television. We are trying to double our budget for television and you can make a difference. Please give me a call at [phone number].

If you can allocate any amount of your Senatorial Trust funds to our campaign, or have some other means of contributing, it could be the difference in our efforts to retire one of the Senate's most liberal members.

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\_\_\_\_\_ I want to allocate \_\_\_\_\_ through the Senatorial Trust towards Paul's campaign.

\_\_\_\_\_ I want to pledge a contribution of \_\_\_\_\_.

\_\_\_\_\_ I would like to speak to Paul about his campaign. Please call my office to schedule a phone conversation.

(Attachment A-3, p. 9.) There is nothing in the record which explains the specific nature of the "Senatorial Trust." Based on the Coverdell solicitation and the response portion in particular, it appears that it may be similar to the DSCC's tally program.

Finally, the DSCC cites MUR 377 (1977), which raised issues similar to those presented here. In that case, it was alleged that contributions made to a state party committee for the purpose of assisting a former Senator in retiring his campaign debts were earmarked. The Commission found "no probable cause to believe" that the state party committee or the candidate's committee committed the alleged violations, and it directed this Office to draft appropriate regulations governing the applicability of the earmarking statute to section 441a(d) expenditures. It appears,

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however, that a rulemaking proceeding was never completed. In the instant cases, the DSCC urges that if the Commission wishes to address this question, a rulemaking -- not an enforcement action -- is the appropriate forum.<sup>3</sup>

b. The Feinstein Campaign

In its response, the Feinstein campaign makes many of the same points set forth by the DSCC. It, too, maintains that tallied contributions are "not restricted or directed for use on behalf of any particular candidate." (Attachment A-4, p. 3.) Furthermore, the Feinstein campaign points out that there is nothing in the record which suggests that tallied contributions were either designated for expenditure on the Feinstein campaign or spent on her campaign's behalf. On the contrary, the campaign submits that the DSCC retains absolute discretion to determine how the funds are spent. It also notes the "unique spending authority" conferred on the national party committees under section 441a(d), and it points out that coordinated party

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3. Of significance here, in two cases after MUR 377, the Commission found that contributions made to a state party committee and subsequently expended by the party committee on the designated candidate were earmarked. See MUR 752 (1978) (contributions found to be earmarked when the date and amount of a contribution by a non-profit corporation whose avowed purpose was to raise funds for a particular Senate candidate coincided almost exactly with the date and amount of the coordinated party expenditures made by the State committee on behalf of that candidate); and MUR 2632 (1990) (\$2,500 contribution to a State party committee found to be earmarked when the cover letter enclosing the check stated that the contribution was to "help in the election of John Evans to the United States Senate" and when upon receipt of the contribution, the State party committee expended more than \$12,000 on behalf of candidate John Evans for an "election day mailgram," and made other expenditures which appeared to relate to get-out-the vote activities on behalf of Evans).

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expenditures are not considered contributions to a candidate's campaign. Furthermore, it argues, there is no restriction in the Act limiting the candidate's ability to raise funds for party activities. In conclusion, the Feinstein campaign proffers that no earmarked contributions were "solicited, received or passed on to the Feinstein Committee by the DSCC . . . . The [Feinstein] Committee received no commitment from the DSCC that any funds raised by the Committee for the DSCC would be spent on behalf of the Committee." (Id. at 5.)

c. The Sanford Campaign

The Sanford campaign incorporates the arguments presented by the DSCC. (Attachment A-5, p. 1.) In addition, it proffers that the Sanford campaign understood that the DSCC does not accept earmarked contributions, and "has never expected that funds raised by the Sanford Committee for the benefit of the DSCC would pass through the DSCC back to the Sanford Committee." (Id. at 2.) Furthermore, it submits that,

The DSCC has always asserted its decision making authority with respect to funds in its treasury, and candidate committees have never been led to believe [by the DSCC] that they could control DSCC allocations of § 441a(d) money by their fund raising efforts in behalf of the DSCC. Indeed, Democratic Senate candidates recognize that the prospects for success in races around the country should be determinative of DSCC decisions to expend DSCC funds.

(Id. at 2-3.) Finally, the Sanford campaign notes that its solicitation states that the "DSCC may accept money above and beyond what a candidate raises." This language, it argues, does not suggest to contributors that donations to the DSCC will be passed through to the Sanford campaign.

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d. The Yeakel Campaign

The Yeakel campaign also adopts the facts and arguments set forth by the DSCC. (Attachment A-6, p. 1.) Furthermore, it argues, none of the facts set forth in the complaint supports a finding that the Yeakel campaign committed any of the alleged violations. It notes that the invitation which allegedly supports the claims against Yeakel is for a dinner "honoring Lynn Yeakel." The invitation plainly states that it is "Authorized and paid for by the Democratic Senatorial Campaign Committee" and the reply envelope is addressed to the DSCC. Nothing in any of the materials proffered by the complainant indicates that any of the communications at issue are attributable to the Yeakel campaign. In conclusion, it submits that:

If the Commission were to determine that the mere presence of a candidate at an event sponsored by a party committee could be the basis of enforcement action against either that party committee or the individual candidate's authorized committee, such a determination would place in doubt literally tens of millions of contribution dollars raised by both major parties in the 1992 general election cycle.

(Id. at 2.)

3. MUR 3658

Finally, the third complaint, also filed by the NRSC, alleges that the Abrams '92 Committee (the "Abrams campaign") accepted excessive contributions in the form of coordinated party expenditures (MUR 3658) (Attachment C-1).<sup>4</sup> In support of this

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4. A fourth related complaint from the National Republican Senatorial Committee, making similar allegations against the Steve Lewis for U.S. Senate Committee, was closed by the Commission on December 9, 1993, on the ground that it involved a small amount of money (MUR 3653).

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allegation, it submitted some of the same DSCC documents attached to the complaint in MUR 3620. In addition, the complainant attached a newspaper article from the Albany Times-Union written during the New York Senate race. (The date is not specified.) (Attachment C-1, p. 5.) According to the article, Abrams' opponent, Alfonse D'Amato, claimed that Abrams encouraged his backers to evade contribution limits by earmarking their donations to the DSCC. Specifically, the article reports, D'Amato questioned whether Abrams urged his maxed-out contributors to send more money to the DSCC with the understanding that the funds would go to Abrams. Abrams' chief fundraiser is quoted as saying that a contribution to a party's national committee is "a legitimate device for the supporters of a Senate campaign." (Id.) Moreover, a DSCC spokesperson denied that the money in question was earmarked. He explained that information concerning a donor's preferred candidate is used as a "secondary consideration" in allocating funds. (Id.)

The NRSC supplemented its complaint with a second Albany Times-Union article dated October 29, 1992, in which some of Abrams' donors acknowledged that they made donations to the DSCC with "either the understanding or expectation that their money would be then sent to Abrams." (Attachment C-2, p. 2.) Specifically, one of Abrams' maxed-out supporters, Fred Hochberg, who gave \$4,000 to the DSCC, is quoted as saying, "It was simply a way I could support more completely [Abrams'] efforts." (Id.) The article further reads:

Asked why he expected that his contribution would go to Abrams, Hochberg said he was "told that you can

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give to Abrams and to the [DSCC] and ask that they can [sic] tally that money for a particular candidate."

Hochberg said he was informed of the practice in conversations with representatives of Abrams' campaign and the [DSCC]. "They said I could leave it to the [DSCC's] discretion or 'tally it.' That's the term they used."

"You simply tell them to tally it for Bob Abrams . . . or any particular race you want the funds to be used for," Hochberg said.

Another maxed-out Abrams donor, Ronald Stanton, gave the committee \$20,000 -- the legal limit -- just a week after the September primary. "I gave with the full expectation that the money would go to help [Abrams]," said Stanton, chief executive officer of Transamonia Co., a chemical shipping and trading firm in Manhattan.

Asked how he had that expectation, Stanton said, "Well, I've been involved in other campaigns and that's just the way things seem to work." He said he did not specifically ask the committee to earmark his \$20,000 to Abrams, but it is clear that the committee knows he supports Abrams. "I think it was a given," he said, declining to elaborate.

(Id. at 3.)

A third Abrams supporter reportedly stated that he contributed to the DSCC with the "specific understanding" that his donation would be used to help Abrams:

"I was advised by the Abrams people," the donor said. The [DSCC] knew the donor was an Abrams backer because he wrote the check out to the [DSCC], then handed it over to the Abrams campaign, which in turn mailed his check and others to the [DSCC] -- a procedure Abrams fund-raisers have already acknowledged they use.

\* \* \*

Since the primary, according to federal records, more than \$450,000 was given to the DSCC by Abrams' deep-pocket backers. The DSCC, in turn, gave Abrams about \$700,000.

In the article, Abrams' campaign manager denied any earmarking. "They said the [DSCC] keeps track of a donor's address and preferred candidate but no one can specifically tell the [DSCC] how to spend its money. Chief among considerations is

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how close a race is and whether the Democratic candidate can win." Finally, at least one Abrams donor stated that he knew there was "no guarantee" that his contribution to the DSCC would end up with Abrams.

"I assumed that the [DSCC] is going to be helpful to all Senate candidates, including Bob [Abrams]. It is my hope and expectation that they will use some of those funds for Bob," said Steven Kumble, chairman of Lincolnshire Management, a Manhattan investment firm, who gave the committee \$7,500 on Sept. 30.

(Id.)

Based on the DSCC's solicitations, and in light of the statements quoted in these articles, the complainant alleges that the Abrams campaign accepted excessive contributions and urged its individual contributors to evade the statutory limit on contributions to a candidate's committee.

4. The Abrams Campaign's Response (MUR 3658)

The Abrams campaign submits that campaign fundraisers informed potential contributors that donations to the DSCC "would not necessarily be used to help Abrams." (Attachment C-3, p. 2.) It argues that the quotation from Abrams' chief fundraiser in the Albany Times-Union article that the DSCC would "typically credit" tallied contributions to a candidate's campaign is consistent with the purpose of the tally system and suggests no violation of the Act. Moreover, the campaign stresses that simply because contributions were credited to the Abrams campaign does not mean that the credited funds were spent on Abrams' behalf. "Crediting is one thing, spending is another." (Id.)

In support of its position, the Abrams campaign submits the

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sworn affidavit of the campaign's Finance Director, Mary Beth Pearlberg. (Attachment C-4.) In her affidavit, Pearlberg declares that, as Finance Director, she conducted or supervised the raising of campaign contributions. She informed solicitees that in addition to making a contribution to the campaign, they could give to the DSCC. She advised them, however, that contributions to the DSCC would not necessarily be used to help the Abrams campaign, but could be spent on behalf of many Democratic Senate candidates. Id. at ¶4. She also informed solicitees that if the DSCC chose to make expenditures on behalf of Abrams, the money would most likely be spent on television and radio advertising. Id. at ¶5.

Pearlberg further declares that she informed those who chose to contribute to the DSCC to notify the DSCC that they supported Abrams, so the DSCC would list the contributions on Abrams' tally. Id. at ¶6. She also informed solicitees that contributions to the DSCC could not be earmarked for use on behalf of the Abrams campaign. Id. at ¶7. Moreover, she declares that the DSCC advised her that the total contributions tallied to Abrams would be one of many factors considered when the DSCC made its spending decisions. Id. at ¶9. Finally, Pearlberg proffers that the DSCC informed her that it does not accept earmarked contributions. Id. at ¶11.

### C. Discussion

Each of the Respondents will be discussed in turn, beginning with the Yeakel campaign. As discussed below, the evidence submitted with the complaint does not support a finding that the

Yeakel campaign either participated in the tally system or committed the violations as alleged. With respect to the other Respondents, however, the available evidence supports a reason to believe finding that the requests for "tallied" contributions were, in fact, solicitations for earmarked contributions. Correspondingly, it also supports a reason to believe finding that contributors who responded to the solicitations intended that their tallied contributions be earmarked for the designated candidate. Therefore, the contributions should have been treated as earmarked, viz. forwarded to the recipient candidate committees within 10 days, reported as earmarked by the conduit and the recipient, and applied to each contributor's per-candidate limit.<sup>5</sup>

1. The Yeakel Campaign

The evidence presented does not support the allegation that the Yeakel for Senate Committee participated in the tally program. The only evidence relating to the Yeakel campaign is a DSCC invitation to a dinner "honoring" Lynn Yeakel. There is no indication that the campaign participated in the tally program, and there are no facts in this record which suggest that Yeakel accepted excessive contributions. Neither the invitation nor the reply card even mentions the tally program. Indeed, the invitation in question demonstrates nothing more than that Yeakel was honored at the dinner. As her campaign argues, nothing in the Act prohibits the attendance of a candidate at an event sponsored by a national party committee. Because the evidence provided in

5. See 2 U.S.C. § 441a(a)(8); and 11 C.F.R. §§ 110.6(b)(2)(iii), 102.8, and 110.6(c)(2).

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the complaint does not support the allegations against this Respondent, there is no reason to believe that the Yeakel campaign violated the Act, as alleged.

2. The DSCC and the Feinstein, Sanford & Abrams Campaigns

It appears that there is reason to believe, however, that the other Respondents committed one or more violations. Specifically, the information disseminated by the DSCC and the plain language of the candidate's solicitations suggest that the solicitations for "tallied" contributions were, in fact, requests for earmarked contributions. Therefore, it appears that contributors who made "tallied" contributions designated for the Feinstein, Sanford, and Abrams campaigns intended that their tallied contributions be earmarked for the designated candidate. To illustrate, in the invitation to meet Senator Bentsen, the Feinstein campaign states,

For those of you who have already maxed out to my campaign, the DSCC tally is an avenue through which you can offer more support.

(Attachment A-1, p. 12.) The Feinstein campaign's other solicitation states that,

As an individual, you can contribute up to \$1,000 directly to the 'Feinstein for Senate' Committee. Contributions in excess of \$1,000 must be made payable to the 'Democratic Senatorial Campaign Committee' and marked 'Feinstein Tally.' The DSCC is the mechanism for U.S. Senate Candidates to receive their allocation from the Democratic party and Dianne is eligible to receive \$2.5 million from this committee.

(Attachment B-2, p. 5) (emphasis added).

The phrasing of these solicitations can be fairly read to state that contributions to the DSCC may be designated for the

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Feinstein campaign. The first states that the DSCC tally is an avenue through which maxed-out donors can "offer more support," strongly implying that the "support" will be given to the Feinstein campaign. Even more telling is the statement in the second solicitation that, "Contributions in excess of \$1,000 must be made payable to the Democratic Senatorial Campaign Committee." It appears that a contributor would reasonably interpret this to mean that if he or she wishes to contribute more than \$1,000 to the Feinstein campaign, the donor need only make the check payable to the DSCC and designate the Feinstein tally.

There is nothing in the record which establishes whether an explanation of the tally system was provided with the solicitations in question. Even if one was, the explanation may not have negated the suggestion of earmarking. Specifically, the DSCC's memorandum explaining the tally system states that:

This is a way for a donor to indicate their candidate preference(s) and how they [sic] would like their DSCC contribution distributed. Financial support to Senate candidates is determined by the Senators who comprise the allocation Committee of the DSCC. A candidate's "tallied" contributions are a key criterion considered in the Committee's allocation decisions.

(Attachment A-1, p. 8) (emphasis added).

While this paragraph explains that tallied contributions are one key criterion on which the DSCC's allocation decisions are based, it also states that the tally system is a method through which donors can indicate how "they would like their DSCC contribution distributed." This at least gives the impression that donors can designate the ultimate recipient of a contribution.

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The DSCC's invitation to the Campaign Countdown is even more explicit:

The Campaign Countdown is designed for a Senate campaign's max-out donors and top contributors who are interested in further supporting their candidates through the DSCC's tally system. . . . The program is designed for donors who would like to tally \$10,000 or more in new money to their preferred Senate candidate(s). . . .

(Attachment A-1, p. 5) (emphasis added). Bearing in mind that this invitation was sent to contributors, it appears that the invitees could reasonably conclude that the "new money" referred to would be "new" or additional money to the designated candidate.

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The solicitation from the Terry Sanford campaign also suggests that a tallied donation will be directed to the candidate: "The DSCC may accept money above and beyond what a candidate raises. If you have given your personal maximum to a candidate, you may still give additional monies to the DSCC. Individuals may give a total of \$20,000 to the DSCC . . . ." It goes on to state that, "The DSCC will help the Sanford campaign according to need, winability [sic] and our tally sheet total. Terry Sanford's race will be close: the tally sheet will be of vital importance." (Attachment A-1, p. 14) (emphasis in original).

As partial support for the Sanford campaign's position that it did not represent that donors had any control over the expenditure of tallied contributions, this solicitation lists several factors on which the DSCC bases its funding decisions. Furthermore, the response card states, "Yes, I would like to do my part to keep Terry Sanford and Democrats like him in the U.S.



Senate." (Attachment A-2, p. 3) (emphasis added). Nonetheless, the statement that the DSCC will help the Sanford campaign according to "our tally sheet total" suggests that some, if not all, of the tallied contributions will be given to the Sanford campaign.<sup>6</sup>

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In addition, the reported statements from some of the Abrams contributors, although purely anecdotal, may offer some insight into some donors' intentions and understanding. Although one donor reportedly declared that he assumed that his donation to the DSCC would help all Democratic Senate candidates, (Attachment C-2, p. 3), three others reportedly said that they believed that their donations would be used for the Abrams campaign. One allegedly said that, "You simply tell [the DSCC] to tally it for Bob Abrams . . . or any particular race you want the funds to be used for." Another donor is quoted as saying, "I gave with the full expectation that the money would go to help [Abrams]." Finally, a third contributor reportedly stated that he had the specific understanding that his donation would be used to help Abrams because "I was advised by the Abrams people." Id. at 2-3. If these statements are accurate, they add further evidence that at least some of the individuals who made contributions to the DSCC for Abrams' tally account did intend

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6. A contribution is still earmarked even if the contributor's designation results in only part of the contribution being passed through. 11 C.F.R. § 110.6(b)(1) (defining "earmarked" as a designation or encumbrance, whether express or implied, which results in "all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee") (emphasis added).



to earmark their contributions.

In summary, the evidence shows that the DSCC's tally system targeted a candidate's "maxed-out" contributors. Furthermore, apart from the invitation concerning Lynn Yeakel, all of the solicitations in these cases at least suggest that a tallied contribution will be used to help the designated candidate. Under these circumstances, it appears that contributors who made tallied contributions in response to the solicitations from the candidates and from the DSCC could reasonably intend and expect that a tallied contribution would be used to support the designated candidate. Indeed, the published statements from some of Abrams' supporters bolster this conclusion.

Consequently, it appears that donors who made a contribution to the DSCC that was tallied for a particular candidate intended at least an "implied encumbrance" within the meaning of the earmarking regulation, 11 C.F.R. § 110.6(b)(1). Correspondingly, it appears that the DSCC was the intended intermediary or conduit of the earmarked contributions within the meaning of 11 C.F.R. § 110.6(b)(2). In addition, 11 C.F.R. § 110.1(h) governing "contributions to committees supporting the same candidate" may also be implicated.

Furthermore, the DSCC's letter to contributors purportedly refusing earmarked donations does not refute the finding that the contributors intended that their tallied contributions be earmarked, nor does it properly "correct" such an intention. An example of the form letter reads, in pertinent part:

On the check you designate the contribution to  
Dianne Feinstein. We assume that you intend the

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"tallying" or crediting of the contribution to Dianne Feinstein, which will be taken into account by DSCC in allocating funds in support of [her] re-election. . . .

[T]he DSCC does not treat a contribution such as yours as "earmarked" and does not accept earmarked contributions.

If you have a different expectation about the uses of this contribution, we will promptly refund it to you at your request. Please advise if this is the case.

(Attachment A-3, p. 7.)

First, this letter puts the onus on the contributor by requiring that the contributor take the affirmative step of contacting the DSCC if he or she has "a different expectation" about the uses of the contribution. It can be expected that many contributors would simply not bother to exert the effort to obtain a refund. Moreover, this letter is less than clear; it recognizes the previous designation and, to the extent it contradicts the candidate's solicitation, it does so only if the reader understands the DSCC's proposed distinction between "earmarking" and "designation." Despite the DSCC's proffer that its policy is to refuse earmarked contributions, at this stage of the proceedings, it still appears that sending a contribution that is "tallied" for a specific candidate to the DSCC constitutes earmarking.

Because it appears that in response to these solicitations the contributors earmarked their "tallied" contributions, there is reason to believe that the Respondents violated several provisions of the Act and the regulations. First, assuming that the tallied contributions were not "passed through" to the designated candidate, as the DSCC contends, it appears that that the DSCC

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failed to forward earmarked contributions to the candidate or candidate committee within the 10-day time period prescribed by 11 C.F.R. §§ 102.8 and 110.6(b)(2)(iii) and failed to report them in accordance with 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c)(1).

On the other hand, if the tallied contributions were "passed through" to the candidates in the form of coordinated party expenditures, as the complainants allege, it appears that the DSCC failed to report the source of the contributions and the intended recipient to the Federal Election Commission and to the intended recipient, as required by 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c)(1).

Furthermore, assuming that the contributions were "passed through," it also appears that the recipient candidate committees failed to report the earmarked contributions and that the DSCC acted as a conduit for earmarked contributions, as required by 11 C.F.R. § 110.6(c)(2). In addition, to the extent such contributions came from either: (1) a donor whose tallied contribution(s) to the DSCC exceeded the statutory maximum for an individual's contributions to a candidate's campaign; or (2) a donor who had already made the maximum contribution to the designated candidate's campaign, it also appears that the candidate committees accepted excessive contributions in violation of 2 U.S.C. § 441a(f).

Finally, it appears that certain individual contributors may have exceeded the contribution limit by contributing to a candidate's campaign and to the DSCC with the knowledge that a

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substantial portion of the "tallied" contribution to the DSCC would be expended on the same candidate's campaign, in violation of 2 U.S.C. § 441a(a)(1)(A). See also 11 C.F.R. §§ 110.1(h); 110.6(a).

3. The NRSC and the Coverdell Campaign

Much of the same reasoning discussed above applies to donors who responded to the Coverdell solicitation by making contributions to the NRSC's "Senatorial Trust" that were "allocated" for the Coverdell campaign. The phrasing of the solicitation from the Coverdell campaign not only implies that the campaign was soliciting earmarked contributions, but specifically that the contributions would be used for the campaign's television budget. It states, "If you can allocate any amount of your Senatorial Trust funds to our campaign, or have some other means of contributing, it could be the difference in our efforts to retire one of the Senate's most liberal members."

(Attachment A-3, p. 9.) It goes on to say that signs of his opponent's vulnerability have "led to the Senatorial Committee fully funding the race and putting over \$500,000 into the campaign for television. We are trying to double our budget for television and you can make a difference. . . ." Id.

Furthermore, the response portion includes a section for the contributor to check off which reads "I want to allocate \_\_\_\_\_ through the Senatorial Trust towards Paul's campaign." Id. This language, in particular, gives rise to the inference that "allocated" donations would be channeled through the Senatorial Trust specifically to the Coverdell campaign. Thus, it appears

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that an individual who made an "allocated" contribution in response to this request could reasonably intend and expect that the contribution would be used for Coverdell's campaign generally, and his television budget specifically. For this reason, it appears that contributors who made "allocated" contributions to Coverdell's campaign through the NRSC's Senatorial Trust earmarked those contributions. In addition, it appears that the NRSC treated such contributions as earmarked. A review of disclosure reports and Commission indices indicates that the NRSC properly forwarded and reported earmarked contributions made to the Coverdell campaign, both before and after the October 9, 1992, solicitation.

A review of the Coverdell campaign's disclosure reports, however, shows that it failed to report the contributions as earmarked and that the NRSC acted as a conduit for the earmarked contributions, in violation of 11 C.F.R. § 110.6(c)(2). Instead, the Coverdell campaign reports the contributions as coming directly from the individual contributors. In addition, one donor's allocated contributions to the NRSC exceeded the limit for an individual's contributions to a designated candidate. Consequently, it appears that the Coverdell campaign accepted one excessive contribution, in violation of 2 U.S.C. § 441a(f). Because the excessive portion of this contribution totals only \$500, this Office makes no recommendation against the Coverdell

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campaign regarding a violation of 2 U.S.C. § 441a(f).

4. The Individual Contributors to the DSCC

This Office does not know the identities of the individuals who may have made contributions to the candidates' committees that apparently exceeded the statutory limit. Nor are we recommending that the Commission pursue the individual contributors at this stage of the proceedings. Following an investigation, however, it may appear that individuals who contributed to a candidate's campaign and also made a tallied contribution to the DSCC designated for that same candidate violated 2 U.S.C. § 441a(a)(1)(A), which governs excessive contributions to a candidate.

Based on the plain language of the solicitations here -- and bearing in mind the reported comments of certain Abrams' supporters -- it appears that people who made tallied contributions "knew" that a substantial portion of their contributions would be expended on the designated candidate. See 11 C.F.R. § 110.1(h)(2). Thus, if it turns out that an individual who made the maximum allowable contribution to a candidate also made a tallied contribution to the DSCC designated for that same candidate, there may be reason to believe that the contributor made excessive contributions in violation of 2 U.S.C. § 441a(a)(1)(A). As the investigation progresses, this Office may

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make recommendations to the Commission concerning the individual contributors.

### III. CONCLUSION

Based on the available record, it appears that contributors who responded to the candidates' solicitations and made "tallied" contributions to the DSCC on behalf of those candidates made earmarked contributions. Accordingly, it appears that the DSCC either: (1) failed to forward earmarked contributions within the applicable 10-day time limit, as set forth in 11 C.F.R. §§ 102.8 and 110.6(b)(2)(iii), and failed to report the original source and intended recipient to the Commission and to the intended recipient, as required by 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c)(1); or (2) if the contributions in question were passed through to the candidates in the form of coordinated party expenditures, that the DSCC failed to report the source of the contributions and the intended recipient to the Commission and to the intended recipient, in accordance with 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c)(1). Consequently, this Office recommends that the Commission find that there is reason to believe that the DSCC violated 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 110.6(c)(1), 110.6(b)(2)(iii), and 102.8.

Furthermore, assuming that the DSCC passed through the contributions in question, it appears that: (1) the Feinstein, Sanford, and Abrams campaigns failed to report the contributions as earmarked and to report the DSCC as the intermediary or conduit

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who forwarded earmarked contributions, as required by 11 C.F.R. § 110.6(c)(2); and (2) these Respondents accepted excessive contributions from either donors whose contributions to the DSCC exceeded the statutory maximum for an individual's contribution to a candidate's campaign and/or donors who had already made the maximum allowable contribution to the candidate's campaign, in violation of 2 U.S.C. § 441a(f). Accordingly, this Office recommends that the Commission find that there is reason to believe that the Feinstein, Sanford and Abrams campaigns violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2).

In addition, the Coverdell campaign failed to report the contributions as earmarked and the NRSC as the intermediary or conduit who forwarded earmarked contributions, as required by 11 C.F.R. § 110.6(c)(2). Accordingly, based on information ascertained by the Federal Election Commission in the normal course of carrying out its supervisory responsibilities, this Office recommends that the Commission find that there is reason to believe the Coverdell campaign violated 11 C.F.R. § 110.6(c)(2).

Next, based on the allegations of the complaint, it does not appear that the Yeakel for Senate Committee violated the Act, as alleged. Therefore, this Office recommends that the Commission find that there is no reason to believe that the Yeakel campaign violated 2 U.S.C. § 441a(f) or any other applicable section of the Act. Finally, because of the overlapping issues involving the DSCC in these three matters, this Office recommends that MUR 3617 and MUR 3658 be merged into MUR 3620.

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IV. DISCOVERY

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It appears that a further investigation is warranted in order to discover how the DSCC handles "tallied" contributions, and whether the individual Senate candidates were advised, either expressly or by implication, that tallied contributions would be expended on behalf of the designated candidate's campaign. The investigation will explore the production and distribution of the solicitations at issue; the purpose of the "tally sheet;" how many contributors made tallied contributions in response to the solicitations; the DSCC's criteria for determining the amount of coordinated party expenditures spent on a given candidate's campaign; and whether those criteria differ for candidates who raised tallied contributions from those who did not. Moreover, it will explore what the DSCC told the candidates or the candidates' committees about these programs. In addition, the discovery will investigate why the Coverdell campaign failed to report the contributions as earmarked and what, if anything, the Coverdell campaign was told by the NRSC at the time the earmarked contributions were forwarded to the campaign. To expedite the investigation, this Office recommends that the Commission approve the attached Subpoenas for the Production of Documents and Answers to Interrogatories.

IV. RECOMMENDATIONS

A. MUR 3617:

1. Merge this matter into MUR 3620, and hereafter refer to this matter as MUR 3620.

B. MUR 3658:

1. Merge this matter into MUR 3620, and hereafter refer to this matter as MUR 3620.

C. MUR 3620:

1. Find reason to believe that the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, violated 2 U.S.C. § 441a(a)(8); 11 C.F.R. § 110.6(c)(1); 11 C.F.R. § 110.6(b)(2)(iii) and 11 C.F.R. § 102.8.

2. Find reason to believe that the Feinstein for Senate Committee and Michael J. Barrett, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2).

3. Find reason to believe that the Sanford for Senate Committee and Alton G. Buck, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2).

4. Find reason to believe that the Abrams Committee, f/k/a Abrams '92 Committee, and Lawrence B. Bittenwieser, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2).

5. Find no reason to believe, based on the allegations of the complaint, that the Yeakel for Senate Committee and Sidney D. Rosenblatt, as treasurer, violated 2 U.S.C. § 441a(f) or any other applicable section of the Act and close the file as to these Respondents.

6. Find reason to believe that the Coverdell for Senate Committee and Marvin Smith, as treasurer, violated 11 C.F.R. § 110.6(c)(2).

7. Approve the appropriate letters.

8. Approve the attached Factual and Legal Analyses.

9. Approve the attached Subpoenas for the Production of Documents and Answers to Interrogatories to the Democratic Senatorial Campaign Committee, the Feinstein for Senate Committee, the Sanford for Senate Committee, the Abrams Committee, f/k/a Abrams '92 Committee, and the Coverdell for Senate Committee.

Date

9/19/94

Lawrence M. Noble  
General Counsel

*LM Noble (LR)*

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Attachments:

A. MUR 3620:

- A-1. Complaint
- A-2. Supplement to Complaint
- A-3. Response of Democratic Senatorial Campaign Committee
- A-4. Response of Feinstein for Senate Committee
- A-5. Response of Sanford for Senate Committee
- A-6. Response of Lynn Yeakel for Senate Committee
- A-7. Proposed Subpoena for the Production of Documents and Answers to Interrogatories to the Democratic Senatorial Campaign Committee.
- A-9. Proposed Subpoena for the Production of Documents and Answers to Interrogatories to the Feinstein for Senate Committee.
- A-10. Proposed Subpoena for the Production of Documents and Answers to Interrogatories to the Sanford for Senate Committee.
- A-11. Proposed Subpoena for the Production of Documents and Answers to Interrogatories to the Abrams Committee.
- A-12. Proposed Subpoena for the Production of Documents and Answers to Interrogatories to the Coverdell for Senate Committee.
- A-13 - A-18. Factual & Legal Analyses

B. MUR 3617:

- B-1. Complaint
- B-2. Supplement to Complaint

C. MUR 3658:

- C-1. Complaint
- C-2. Supplement to Complaint
- C-3. Response of Abrams '92 Committee
- C-4. Affidavit of Mary Beth Pearlberg


95043690133



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20461

MEMORANDUM

TO: LAWRENCE M. NOBLE  
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS   
COMMISSION SECRETARY

DATE: SEPTEMBER 29, 1994

SUBJECT: MURs 3620, 3617, and 3658 - MEMORANDUM TO THE  
COMMISSION DATED  
SEPTEMBER 19, 1994.

The above-captioned document was circulated to the  
Commission on Tuesday, September 20, 1994 at 11:00.

Objection(s) have been received from the  
Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	<u>XXX</u>
Commissioner Elliott	<u>XXX</u>
Commissioner McDonald	<u>      </u>
Commissioner McGarry	<u>XXX</u>
Commissioner Potter	<u>      </u>
Commissioner Thomas	<u>XXX</u>

This matter will be placed on the meeting agenda  
for Tuesday, October 4, 1994.

Please notify us who will represent your Division before  
the Commission on this matter.

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## BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
Feinstein for Senate Committee and	)	MUR 3617
Michael J. Barrett, as treasurer.	)	
Feinstein for Senate Committee and	)	
Michael J. Barrett, as treasurer;	)	MUR 3620
Democratic Senatorial Campaign	)	
Committee and Donald J. Foley, as	)	
treasurer;	)	
Yeakel for Senate Committee and	)	
Sidney D. Rosenblatt, as treasurer;	)	
Sanford for Senate Committee and	)	
Alton G. Buck, as treasurer.	)	
Abrams Committee, f/k/a Abrams	)	
'92 Committee and Lawrence B.	)	MUR 3658
Buttenwieser, as treasurer.	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on October 4, 1994, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions with respect to MURS 3617, 3620, and 3658:

- A. MUR 3617: Merge this matter into MUR 3620, and hereafter refer to this matter as MUR 3620.
- B. MUR 3658: Merge this matter into MUR 3620, and hereafter refer to this matter as MUR 3620.

(continued)

Federal Election Commission  
Certification for MURS 3617,  
3658, and 3620  
October 4, 1994

Page 2

C. MUR 3620:

1. Find reason to believe that the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, violated 2 U.S.C. § 441a(a)(8) 11 C.F.R. § 110.6 (c)(1); 11 C.F.R. § 110.6(b)(2) (iii) and 11 C.F.R. § 102.8.
2. Find reason to believe that the Feinstein for Senate Committee and Michael J. Barrett, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6 (c)(2).
3. Find reason to believe that the Sanford for Senate Committee and Alton G. Buck, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2).
4. Find reason to believe that the Abrams Committee, f/k/a Abrams '92 Committee, and Lawrence B. Bittenwieser, as treasurer, violated 2 U.S.C. 441a(f) and 11 C.F.R. § 110.6(c)(2).
5. Find no reason to believe, based on the allegations of the complaint, that the Yeakel for Senate Committee and Sidney D. Rosenblatt, as treasurer, violated 2 U.S.C. § 441a(f) or any other applicable section of the Act and close the file as to these Respondents.

(continued)

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6. Open a MUR and find reason to believe that the Coverdell for Senate Committee and Marvin Smith, as treasurer, violated 11 C.F.R. § 110.6(c)(2).
7. Approve appropriate letters pursuant to the actions taken in these matters and the Commission discussion.
8. Approve the Factual and Legal Analyses attached to the General Counsel's September 19, 1994 report subject to the revisions agreed upon during the meeting discussion.
9. Approve the Subpoenas for the Production of Documents and Answers to Interrogatories to the Democratic Senatorial Campaign Committee, the Feinstein for Senate Committee, the Sanford for Senate Committee, the Abrams Committee, f/k/a Abrams '92 Committee, and the Coverdell for Senate Committee, as recommended in the General Counsel's September 19, 1994 report

Commissioners Aikens, McDonald, McGarry, Potter and Thomas voted affirmatively for the decision; Commissioner Elliott was not present.

Attest:

10-5-94  
Date

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

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 17, 1994

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Robert F. Bauer, Esquire  
Perkins Coie  
607 14th Street, N.W.  
Washington, DC 20005

RE: MUR 3620  
Democratic Senatorial  
Campaign Committee and  
Donald J. Foley, as treasurer

Dear Mr. Bauer:

On September 29 and October 2, 1992, the Federal Election Commission ("Commission") notified your clients, the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, of complaints in MURs 3620 and 3617 alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). In addition, on October 23 and November 4, 1992, you were notified of the complaint and supplement to the complaint in MUR 3658. Also, on January 11, 1993, you were notified of the supplement to the complaint in MUR 3620. Copies of the complaints and supplements were provided with these notifications.

Upon further review of the allegations contained in the complaints and supplements, and information supplied by you, the Commission, on October 4, 1994, found that there is reason to believe the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, violated 2 U.S.C. § 441a(a)(8) of the Act and 11 C.F.R. §§ 110.6(c)(1), 110.6(b)(2)(iii) and 102.8 of the Commission's regulations. On October 4, 1994, the Commission also determined to merge MURs 3617 and 3658 into MUR 3620, and hereafter refer to this matter as MUR 3620. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the Order and Subpoena. In the absence of additional information,

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Mr. Bauer  
Page 2

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 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 investigation to be made public. If you have any questions, please contact Mary Ann Bumgarner, the attorney assigned to this matter, at (202) 219-3400.

For the Commission,

  
Trevor Potter  
Chairman

Enclosures  
Order and Subpoena  
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

)  
)  
) MUR 3620  
)

SUBPOENA TO PRODUCE DOCUMENTS  
ORDER TO SUBMIT WRITTEN ANSWERS

TO: The Democratic Senatorial  
Campaign Committee and Donald J. Foley,  
as treasurer  
c/o Robert F. Bauer  
PERKINS COIE  
607 14th Street, N.W.  
Washington, D.C. 20005-2011

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in  
furtherance of its investigation in the above-captioned matter,  
the Federal Election Commission hereby orders you to submit  
written answers to the questions attached to this Order and  
subpoenas you to produce the documents requested in the attachment  
to this Subpoena. Legible copies which, where applicable, show  
both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and forwarded to  
the Office of the General Counsel, Federal Election Commission,  
999 E Street, N.W., Washington, D.C. 20463, along with the  
documents within 30 days of receipt of this Order and Subpoena.

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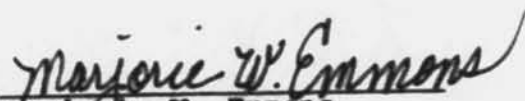
MUR 3620  
Democratic Senatorial  
Campaign Committee and Donald J.  
Foley, as treasurer  
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WHEREFORE, the Chairman of the Federal Election Commission  
has hereunto set his hand in Washington, D.C. on this 14<sup>th</sup> day of  
October, 1994.

For the Commission,

  
\_\_\_\_\_  
Trevor Potter  
Chairman

ATTEST:

  
\_\_\_\_\_  
Marjorie W. Emmons  
Secretary to the Commission

Attachment  
Questions and Document Requests

95043690196

INSTRUCTIONS

Each answer shall be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

Each answer shall be preceded by the question or interrogatory to which the answer pertains.

Please organize all documents and label each group of documents to correspond with the specific Request for Production to which each document or group of documents pertains.

In answering these interrogatories and requests for production of documents, furnish all documents and all information, however obtained, that is in your possession, or known by or otherwise available to you, or in the possession of or known by or otherwise available to your attorneys, agents, employees, or other representatives of you and/or your attorneys.

The response to each interrogatory shall set forth separately the identification of each person capable of furnishing testimony concerning the response given. In addition, the response shall identify every individual who provided information, documentation, or other input relating to the response, and those who assisted in drafting the interrogatory response.

Unless otherwise indicated, each discovery request shall refer to the time period covering the 1992 general election campaign.

If you cannot answer any of the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder. In addition, state what information or knowledge you have concerning the unanswered portion and describe the specific efforts made by you or anyone on your behalf to ascertain the information. Also, state as definitively as possible when you anticipate obtaining the information and supplementing your response.

If you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient

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detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

The following interrogatories and requests for production of documents are continuing in nature, requiring you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information subsequent to your original answers. Include in any supplemental answers the date and manner in which such further or different information came to your attention.

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### DEFINITIONS

For purposes of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" or "your" shall mean the named respondents in this action to whom these discovery requests are addressed, including all persons who act in any capacity for the respondents or in any relationship to the respondents, including officers, employees, agents or attorneys and/or others who act on the respondents' behalf.

The "DSCC" shall mean the Democratic Senatorial Campaign Committee, including all persons who act in any capacity for the DSCC or in any relationship to the DSCC, including officers, employees, agents or attorneys and/or others who act on behalf of the DSCC.

"Coordinated party expenditures" shall refer to those expenditures made by the DSCC in connection with the 1992 general election campaign of Democratic candidates for election to the office of U.S. Senator pursuant to 2 U.S.C. § 441a(d)(3)(A).

The "tally sheet" or "tally sheet program" or "tally program" shall refer to the "Tally Sheet" described in the DSCC's Response dated November 9, 1992.

A "tallied contribution" shall refer to a contribution to the DSCC that the contributor has indicated is to be tallied for a particular candidate's tally sheet.

"Democratic Senate candidate" shall refer to any Democratic candidate who ran for election to the office of U.S. Senator during the 1992 general election campaign including all persons who act in any capacity for the Democratic Senate candidate or in any relationship to the Democratic Senate candidate, including officers, employees, agents or attorneys and/or others who act on behalf of the Democratic Senate candidate and/or his or her campaign.

"Candidate committee" or "candidate's committee" shall refer to the authorized campaign committee of any Democratic candidate who ran for election to the office of Senator during the 1992 general election campaign including all persons who act in any capacity for the candidate committee or in any relationship to the candidate committee, including officers, employees, agents or attorneys and/or others who act on behalf of the candidate committee.

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"Person" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Identify" with respect to a person shall mean to state the full name, the most recent business and residence addresses, the most recent business and home telephone numbers, the person's position and job description at the time in question with respect to the interrogatory, the present occupation or position of such person, and the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean to state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, and the number of pages comprising the document.

"And" as well as "or" shall be construed either disjunctively or conjunctively, as necessary to bring within the scope of these interrogatories and requests for the production of documents any information and documents which may otherwise be construed to be outside their scope.

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BEFORE THE FEDERAL ELECTION COMMISSION  
INTERROGATORIES AND REQUESTS FOR DOCUMENTS

MUR 3620  
Democratic Senatorial  
Campaign Committee and  
Donald J. Foley, as  
treasurer

1. Please describe, in full and complete detail, the DSCC's tally sheet program.
2. Please state the purpose(s) of the tally sheet program.
3. Identify all persons who had responsibility, including supervisory responsibility, for creating, approving, implementing and/or operating the DSCC's tally sheet program.
4. For each person identified in the response to interrogatory number 3, please state his or her job title and describe in detail the nature and scope of his or her duties, and what specific duties were performed in connection with the DSCC's tally sheet program.
5. Please describe in full and complete detail when and how the DSCC informed Democratic Senate candidates of the tally sheet program.
6. Please describe in full and complete detail when and how the DSCC recruited or encouraged Democratic Senate candidates to participate in the tally sheet program (e.g., telephone calls, written solicitations, etc.).
7. Please state whether the DSCC offered, explicitly or impliedly, any incentive for participating in the tally sheet program to any Democratic Senate candidate and/or candidate committee.
8. If the answer to interrogatory number 7 is in the affirmative:
  - a. Please describe in full and complete detail each such incentive by candidate or candidate committee;
  - b. Please identify each and every person, by candidate or candidate committee, to whom the incentive(s) was offered or communicated;

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- c. Please describe how and when the DSCC communicated the incentive(s) to each of the persons identified in response to interrogatory number 8(b).

9. Please identify each and every Democratic Senate candidate who participated in the tally sheet program during the 1992 general election campaign.

10. For each and every Democratic Senate candidate identified in the response to interrogatory number 9, please provide the following information:

- a. By candidate, please state the contributor's name, and the date and the amount of each contribution made payable to the DSCC that was designated for that candidate's tally sheet.
- b. By candidate, please state the total amount of contributions tallied for each candidate.

11. Please describe in full and complete detail the method by which the DSCC recorded contributions designated for a candidate's tally account.

12. State whether tallied contributions were segregated in any way from non-tallied contributions made to the DSCC.

13. Please identify each and every bank account into which the DSCC deposited non-tallied contributions in the 1992 General Election. For each and every account:

- a. Please identify the bank at which the account is held.
- b. Please state the name of the account and the date the account was opened.

14. State whether the DSCC deposited tallied contributions into the bank account or accounts identified in the response to interrogatory number 13.

15. If the response to interrogatory number 14 is in the affirmative, please identify each and every bank account into which tallied contributions were deposited.

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16. If the response to interrogatory number 14 is in the negative, please identify each and every bank account into which the DSCC deposited tallied contributions. For each and every account:

- a. Please identify the bank at which the account is held.
- b. State the name of the account and the date the account was opened.

17. Regarding the invitation to the "U.S. Senate Campaign Countdown" attached as Exhibit 1 to the complaint in MUR 3620 (the "Campaign Countdown invitation"), please provide the following information:

- a. Please identify all persons who were involved and/or who had responsibility, including supervisory responsibility, for writing, producing and/or distributing the Campaign Countdown invitation, and please specify each person's role.
- b. Please state the total number of Campaign Countdown invitations mailed or otherwise distributed; what was the source of the distribution list?
- c. Of those invited, how many persons had given the maximum amount to any 1992 Democratic Senatorial campaign?
- d. Please describe in full and complete detail how the DSCC determined to whom the Campaign Countdown invitation would be mailed or otherwise distributed. Was a person's status as a "maxed out" contributor to a 1992 Democratic Senatorial campaign a factor in being included on the distribution list?
- e. State whether the DSCC produced and distributed more than one version of the Campaign Countdown invitation. If so, identify and produce a copy of each.
- f. Identify and produce a copy of all documents that accompanied the Campaign Countdown invitation.

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18. With regard to the events referred to in the Campaign Countdown invitation, i.e., the Campaign Countdown at DSCC Headquarters; cocktails at the home of Senator and Mrs. Edward M. Kennedy; dinner at the home of Senator and Mrs. Charles S. Robb; and breakfast at the home of Senator and Mrs. John D. Rockefeller, please provide the following information:

- a. The number of people who attended each event.
- b. The total number of contributions raised at each event, the name of each contributor at each event, and the amount of each contribution.
- c. By event, the total number of tallied contributions, the amount of each tallied contribution, the identity of each contributor who made a tallied contribution, and the name of the candidate for whom each contribution was tallied.

19. With regard to the memorandum entitled "The Tally Option" attached as Exhibit 2 to the complaint in MUR 3620 (the "Tally Option memorandum"), please provide the following information:

- a. Please identify all persons who were involved and/or had responsibility, including supervisory responsibility, for writing, producing and/or distributing the Tally Option memorandum, and specifically describe each person's role.
- b. Please state how many copies of the Tally Option memorandum were mailed or otherwise distributed; what was the source of the distribution list?
- c. How many recipients of the Tally Option memorandum had given the maximum amount to any 1992 Democratic Senatorial campaign?
- d. Please describe in full and complete detail how the DSCC determined to whom the Tally Option memorandum would be mailed or otherwise distributed. Was a person's status as a "maxed out" contributor to a 1992 Democratic Senatorial campaign a factor in being included on the distribution list?

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- e. State whether the DSCC produced and distributed more than one version of the Tally Option memorandum. If so, identify and produce a copy of each.
- f. Identify and produce a copy of all documents that accompanied the Tally Option memorandum.

20. With regard to the August 12, 1992 memorandum from Steve Ricchetti and addressed to "Senate AA's and Campaign Finance Directors" attached as Exhibit 3 to the complaint in MUR 3620 (the "August 12 memorandum"), please provide the following information:

- a. Please identify all persons who were involved and/or had responsibility, including supervisory responsibility, for writing, producing and/or distributing the August 12 memorandum, and specifically describe each person's role.
- b. Please state whether the August 12, 1992, memorandum was sent to all Democratic Senate AA's and Campaign Finance Directors.
- c. If the answer to interrogatory number 20(b) is in the negative, please identify the Democratic Senate AA's and Campaign Finance Directors to whom the August 12 memorandum was sent, and please explain how the DSCC determined to which AA's or Campaign Finance Directors the August 12 memorandum would be sent.
- d. Please state whether the August 12 memorandum was sent to all Democratic Senate Candidates or candidate committees.
- e. If the answer to interrogatory number 20(d) is in the negative, please identify the Democratic Senate Candidate(s) or candidate committees to whom the August 12 memorandum was sent, and please explain how the DSCC determined to which candidates or candidate committees the August 12 memorandum would be sent.
- f. Please identify and produce a copy of all documents that accompanied the August 12 memorandum.

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- g. Please identify which candidates or candidate committees invited donors to the events discussed in the August 12 memorandum.

21. With regard to the Campaign Countdown and the other events referred to in the August 12 memorandum, state whether the DSCC drafted, prepared, or supplied solicitations and/or samples of solicitations to be sent to contributors by any of the Democratic Senate candidates or candidate committees. If so, please produce a copy of each such solicitation and/or sample solicitation.

22. With regard to the August 9, 1992, solicitation signed by Dianne Feinstein attached as Exhibit 4 to the complaint in MUR 3620, did the DSCC draft, prepare, supply, or otherwise participate in the production of the solicitation? If so, please identify each such person and describe his or her role in connection with the solicitation.

23. With regard to the solicitation entitled "Terry Sanford's Campaign for U.S. Senate" attached as Exhibit 5 to the complaint in MUR 3620, did the DSCC draft, prepare, supply, or otherwise participate in the production of the solicitation? If so, please identify each such person and describe his or her role in connection with the solicitation.

24. With regard to the September 14, 1992, solicitation from the Feinstein for Senate Committee attached as Exhibit 1 to the supplement to the complaint in MUR 3617, did the DSCC draft, prepare, supply, or otherwise participate in the production of the solicitation? If so, please identify each such person and describe his or her role in connection with the solicitation.

25. Did the DSCC draft, prepare, supply, or otherwise participate in the production of any solicitation issued by any Democratic Senate candidate or candidate committee which referred to the tally program?

26. If the answer to interrogatory number 25 is in the affirmative:

- a. Please identify and produce a copy of each such solicitation;
- b. For each such solicitation, identify each and every person who was involved in the solicitation and describe the nature of each person's involvement.

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27. Identify each person who has responsibility for or who is involved in deciding the amount of coordinated party expenditures the DSCC will expend on behalf of each Democratic Senate candidate or candidate committee.

28. For each person identified in interrogatory number 27, describe the nature of his or her involvement in these decisions.

29. Identify the factors or criteria considered by the DSCC in determining the amount of coordinated party expenditures to be spent on behalf of a Democratic Senate candidate's campaign.

30. Are the factors or criteria used by the DSCC to determine the amount of coordinated party expenditures to be spent on behalf of a candidate identical for candidates who have raised tallied contributions as for candidates who have not?

31. If the answer to interrogatory number 30 is in the negative, please describe in full and complete detail how the factors or criteria differ.

32. If the response to interrogatory number 30 is in the affirmative, please state whether the factors or criteria considered by the DSCC in determining the amount of coordinated party expenditures are applied identically for candidates who have raised tallied contributions as for those who have not.

33. If the response to interrogatory number 32 is in the negative, please describe in full and complete detail how the applications differ.

34. Please state whether candidates who raise tallied contributions are given preference in any way over those who do not raise tallied contributions when the DSCC decides the amount of coordinated party expenditures it will spend on behalf of a Democratic Senate candidate's campaign. If so, describe how or in what ways candidates who raised tallied contributions are given preference over those who have not.

35. Please state whether you contend that tallied contributions are not earmarked contributions, as defined and regulated by 2 U.S.C. § 441a(a)(8) and the governing regulations. If you so contend:

- a. Please state and describe in full and complete detail each and every fact which supports this contention.

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- b. Please identify and produce each and every document which you contend supports this contention.

36. With regard to the form letter that the DSCC asserts was sent to clarify a contributor's intent when it received a donation that appeared to be earmarked (Exhibit A of the DSCC's Response to the Complaints dated 11/9/92), please provide the following information:

- a. Please describe in full and complete detail the circumstances under which the DSCC sent these form letters.
- b. Please state whether the DSCC sent such a form letter to every contributor who gave a tallied contribution.
- c. If the answer to interrogatory number 36(b) is in the negative, please identify and explain which contributors of tallied contributions were sent such a form letter.
- d. Please identify and produce any other versions of this form letter that were sent by the DSCC.
- e. Please state whether any contributor responded to one of these form letters during the 1992 election cycle.
- f. If the answer to interrogatory number 36(e) is in the affirmative, please state how many responses were received and describe fully the nature of the responses.
- g. If the answer to interrogatory number 36(e) is in the affirmative, please state how many contributors requested refunds in response to these form letters.

37. Regarding the assertion in the DSCC's Response to the Complaints that the DSCC has an "express policy of not accepting earmarked contributions," please describe in full and complete detail each and every reason for such a policy and please state when the DSCC instituted this policy.

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#### REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Please provide a copy of each and every version of every solicitation, mailing, or other document that the DSCC sent to potential contributors in connection with the 1992 general election campaign that refers to the tally program or which discusses or describes the option of tallying a contribution for a candidate's tally account.

2. Please provide a copy of each and every version of every memorandum, letter, or other document that the DSCC sent to Democratic Senate candidates and/or to the candidates' committees that explains, describes, and/or relates to the tally sheet program.

3. Please provide a copy of all documents pertaining to the tally sheet program, including, but not limited to:

- a. any and all agreements between the DSCC and any Democratic Senate candidate(s) or candidate committee(s);
- b. correspondence between the DSCC and any Democratic Senate candidate, and/or candidate committee;
- c. telephone memoranda and/or other written memoranda pertaining to the tally program and/or its implementation;
- d. letters or sample letters soliciting tallied contributions;
- e. other documents or sample documents soliciting tallied contributions;
- f. telephone scripts for solicitation calls to contributors; and
- g. thank-you letters or sample thank-you letters sent to contributors.

4. Please provide a copy of each and every Democratic Senate candidate's tally sheet.

5. For each Democratic Senate candidate who was designated for the tally sheet program, please provide a copy of all documents or accounting records which reflect the identities of the contributors and the dates and amounts of each contribution tallied for that candidate during the 1992 general election campaign.

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6. Please provide a copy of all documents which describe or discuss the factors or criteria that were considered or applied by the DSCC when determining the amount of coordinated party expenditures to be spent on behalf of each candidate's campaign.

7. For each Democratic Senate candidate, please provide a copy of each and every document the DSCC sent to the candidate or to the candidate's committee relating to the amount of coordinated party expenditures the DSCC had spent or had determined to spend on behalf of the candidate's campaign.

8. For each Democratic Senate candidate, please provide a copy of each and every document the DSCC sent to the candidate or to the candidate's committee relating to the amount of contributions that had been tallied to or for that candidate.

9. Please provide a copy of all minutes, records, or other documents relating to or memorializing the DSCC's decisions about the amount of coordinated party expenditures to be spent on behalf of each and every Democratic Senate candidate's campaign.

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Democratic Senatorial  
Campaign Committee  
and Donald J. Foley,  
as treasurer

MUR: 3620

**I. GENERATION OF MATTER**

These cases arise from three complaints filed with the Federal Election Commission ("Commission") during the 1992 election cycle. At issue is whether certain contributions made to the Democratic Senatorial Campaign Committee ("DSCC") were earmarked for a particular candidate. The first complaint, MUR 3617, was filed by the John Seymour for U.S. Senate Committee, and names as a Respondent the Feinstein for Senate Committee (the "Feinstein campaign").

The second complaint, MUR 3620, filed by the National Republican Senatorial Committee ("NRSC"), names as Respondents the DSCC, the Feinstein for Senate Committee, the Yeakel for Senate Committee (the "Yeakel campaign"), and the Sanford for Senate Committee (the "Sanford campaign"). The third complaint, MUR 3658, was also filed by the NRSC. It names as a Respondent the Abrams '92 Committee (the "Abrams campaign"). The DSCC filed a response in all three MURS.

The complaints challenge the DSCC's "tally system," an accounting method used to keep track of the total funds raised for the DSCC by a particular candidate. The complaints allege that during the 1992 Senate race, the DSCC accepted contributions

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designated for a specific candidate's tally account, which contributions were allegedly "passed through" to the designated candidate in the form of coordinated party expenditures. The complainants charge that this practice violates 2 U.S.C. § 441a(a)(8), which mandates that an "earmarked" contribution made through an intermediary be treated as a contribution from the donor to the candidate, and 11 C.F.R. § 110.6(c)(1)(i), which requires that the intermediary of an earmarked contribution disclose the source of the contribution and the recipient candidate. It is further alleged that by receiving coordinated party expenditures from the DSCC, certain Democratic Senate candidates accepted excessive contributions from: (1) donors whose tallied contribution(s) to the DSCC exceeded the statutory limit for an individual's contributions to the designated candidate; and (2) donors who had already made the maximum allowable direct contributions to their campaigns (informally referred to by the Respondents as "maxed-out" or "max-out" contributors).

## II. FACTUAL AND LEGAL ANALYSIS

### A. The Act

The Federal Election Campaign Act of 1971, as amended, ("the Act") establishes dollar limits on contributions to candidates for Federal office. An individual may not contribute to a candidate (and the candidate's authorized committees) more than \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). In addition, an individual may contribute up to \$20,000 per calendar year to political committees established and maintained by a national political

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party that are not the authorized political committees of any candidate. 2 U.S.C. § 441a(a)(1)(B). The Act further provides that a candidate may not knowingly accept, and a political committee may not knowingly make, a contribution or expenditure in violation of the provisions of the Act. 2 U.S.C. § 441a(f).

A contribution made by a person, either directly or indirectly, on behalf of a particular candidate, which is in any way earmarked or otherwise directed through an intermediary or conduit, shall be treated as a contribution from such person to the candidate. 2 U.S.C. § 441a(a)(8). "Earmarked" means "a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee." 11 C.F.R. § 110.6(b)(1).

A "conduit" or "intermediary" means any person who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee (with certain exceptions not applicable here). 11 C.F.R. § 110.6(b)(2). In addition, 11 C.F.R. § 110.6(b)(2)(iii) provides that any person who receives an earmarked contribution shall, among other requirements, forward such earmarked contribution to the candidate or authorized committee in accordance with 11 C.F.R. § 102.8. Section 102.8 provides, inter alia, that earmarked contributions must be forwarded no later than 10 days after receipt.

Furthermore, the intermediary or conduit of an earmarked contribution must report the source of the contribution and the

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intended recipient to the Federal Election Commission and to the intended recipient. 2 U.S.C. § 441a(a)(8). See also 11 C.F.R. § 110.6(c)(1). Similarly, the recipient candidate committee must report earmarked contributions and each conduit or intermediary who forwards one or more earmarked contributions which in the aggregate exceed \$200 in any calendar year in accordance with 11 C.F.R. § 110.6(c)(2).

In addition, the Act authorizes the national and state committees of a political party to make additional expenditures in support of that party's candidates for federal office:

Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, . . . may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2) and (3) of this subsection.

2 U.S.C. § 441a(d)(1).

Paragraph (2) of this subsection applies to Presidential candidates and is not relevant here. Paragraph (3), which concerns candidates for Senate, provides that the national and State committees of a political party may each make expenditures which do not exceed the greater of \$20,000 or two cents multiplied by the voting age population of the State. See 2 U.S.C. § 441a(d)(3)(A) and 11 C.F.R. §§ 110.7(b)(1) and (b)(2)(i). These expenditures are generally referred to as "441a(d) expenditures" or "coordinated party expenditures." If a state party committee chooses not to make the expenditures permitted by section 441a(d), it may designate an agent, such as a national committee of the

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party, to make coordinated party expenditures on its behalf. FEC v. Democratic Senatorial Campaign Comm., 454 U.S. 27 (1981). The national committees are not capable of making independent expenditures in connection with the general election campaign of a candidate for Federal office. 11 C.F.R. § 110.7(b)(4).

B. The Complaints

1. MURs 3620 and 3617

In MUR 3620, the complainant alleges that the DSCC failed to report earmarked contributions and charges the Feinstein campaign, the Yeakel campaign, and the Sanford campaign with accepting excessive contributions from donors who had already made the maximum contribution to these campaigns. In support, the complainant submitted eight exhibits, six with the original complaint, and two additional documents with a supplement to the complaint.

The first three exhibits are solicitations and memoranda from the DSCC. Exhibit one is an invitation from the DSCC to contributors for an event entitled "U.S. Senate Campaign Countdown," which is described as a:

special conference designed to provide strategic information on the 1992 U.S. Senate campaigns followed by a special program of cocktails, dinner and breakfast at the private homes of Senators Kennedy, Robb and Rockefeller.

The invitation goes on to discuss the DSCC's tally system:

The Campaign Countdown is designed for a Senate campaign's max-out donors and top contributors who are interested in further supporting their candidates through the DSCC's tally system. The DSCC provides donors with the opportunity to tally their contributions to the Democratic Senate nominees of their choice. The program is designed for donors who would like to tally \$10,000 or more in new money to their preferred Senate

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candidate(s) and who would like to join one of the DSCC's elite donor programs.

Complaint, NUR 3620, Exhibit 1.

The second exhibit is a memorandum from the DSCC explaining the function of the Democratic Senatorial Campaign Committee in general, and the tally option specifically. It reads, in relevant portion:

**The Democratic Senatorial Campaign Committee**

**THE TALLY OPTION**

**WHAT ROLE DOES THE DSCC PLAY?**

**Funding Democratic Senate Nominees**

The primary function of the Democratic Senatorial Campaign Committee is to provide funding for Democratic Senate candidates in their quest for the U.S. Senate. The Finance Staff of the DSCC raises funds which are allocated to targeted Democratic Senate races based on the campaign's need and winability [sic]. These funds provide nominees with an invaluable source of additional funding which helps them keep their competitive edge . . . .

**WHY GIVE TO THE DSCC?**

Under FEC regulations, an individual may contribute a maximum of \$2000 to a Senate candidate. (\$1000 in the primary and another \$1000 to a general campaign fund). However, an individual may contribute up to \$20,000 annually to a political party organization like the DSCC. PAC's may contribute a maximum of \$15,000 annually to the DSCC. The Committee in turn allocates those funds to Democratic Senate candidates who are up for election in the current cycle. An individual (or PAC) is able to make the maximum legal contribution to assist Democratic Senate candidates financially by contributing to the DSCC.

**WHAT DOES "TALLY" MEAN?**

When contributing to the DSCC, a donor may request that his or her contribution be "tallied" to the Democratic Senate candidate(s) of their choice. This is a way for a donor to indicate their candidate preference(s) and how they would like their DSCC contribution distributed. Financial support to Senate

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candidates is determined by the Senators who comprise the allocation Committee of the DSCC. A candidate's "tallied" contributions are a key criterion considered in the Committee's allocation decisions.

\* \* \*

Complaint, MUR 3620, Exhibit 2. It is not clear from the record whether this memorandum explaining the "Tally Option" was included with the DSCC's invitation to the "Campaign Countdown" -- or with any other solicitation.

The third exhibit to the NRSC's complaint is a memorandum from the DSCC to "Senate AA's & Campaign Finance Directors" concerning the "Campaign Countdown" program. The relevant portions read:

Please join the DSCC for a special program that will be of great benefit to your Senate campaign.

The program is designed for high dollar and max-out contributors to 1992 Senate campaigns.

On Wednesday afternoon September 9, the DSCC will host a campaign conference covering the latest information on the 1992 Senate races . . . .

That evening, donors and contributors will be invited to a special evening of cocktails at the McLean home of Senator & Mrs. Ted Kennedy (6:30 - 8:00 pm) followed by dinner at the home of Senator & Mrs. Charles S. Robb. The following morning, guests will be invited to breakfast at the home of Senator & Mrs. Jay Rockefeller.

The program is specifically designed to encourage max-out and high-dollar contributors to tally \$10,000 or more (per couple) in new money to their preferred Democratic Senate candidate(s).

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This is an ideal opportunity for you to cultivate your high dollar prospects and encourage them to support their candidate(s) through the DSCC's tally system.

\* \* \*

Complaint, MUR 3620, Exhibit 3.

The fourth exhibit is a copy of a fundraising solicitation from the Feinstein campaign in which the candidate urges her maxed-out donors to contribute money to the DSCC to be "credited" to Feinstein's tally account. Specifically, the solicitation invites donors to meet Feinstein and then-Senator Lloyd Bentsen at a fundraising event in a private Beverly Hills home. It reads, in pertinent part:

[Senator Bentsen] has graciously agreed to help us raise money for my account with the Democratic Senatorial Campaign Committee.

The DSCC is a Washington based group set up by U.S. Senators in the Democratic Party to help raise money and support for Democratic U.S. Senate candidates throughout the country. They can accept personal contributions of up to \$20,000 in a calendar year (and within an individual's \$25,000 yearly federal contribution limit). Your contribution to the DSCC can be credited to the Dianne Feinstein account.

I hope you will consider a contribution of at least \$1,000 per person to the DSCC. John Seymour will receive the maximum of \$2.5 million from the Republican Senatorial Campaign Committee. I am hopeful that this evening will be a major fundraising event.

For those of you who have already maxed out to my campaign, the DSCC tally is an avenue through which you can offer more support. For further information regarding your donation to my DSCC account or my

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campaign, please call Tricia Riffenburgh at [phone number].

I look forward to seeing you on the 27th.

Warmest regards,

(signed)  
Dianne Feinstein

Complaint, MUR 3620, Exhibit 4.

Fifth, in support of the allegations against the Sanford for Senate Committee, the NRSC attaches a solicitation from the Sanford campaign which reads, in pertinent part:

**TERRY SANFORD'S CAMPAIGN FOR U.S. SENATE  
and the  
Democratic Senatorial Campaign Committee**

The Democratic Senatorial Campaign Committee (DSCC) works to elect Democratic Senators across the country. One of their tools is financial. The DSCC may accept money above and beyond what a candidate raises. If you have given your personal maximum to a candidate, you may still give additional monies to the DSCC. Individuals may give a total of \$20,000 to the DSCC; Political Action Committees may give up to \$15,000. If specified, such contributions may be "tallied" to Terry Sanford's DSCC tally sheet.

The DSCC will help the Sanford campaign according to need, winability [sic], and our tally sheet total. Terry Sanford's race will be close: the tally sheet will be of vital importance.

\* \* \*

Electing a Democratic majority in the Senate is vital business: Terry Sanford needs to be in that majority. To help him, and to help the DSCC, please make your check to DSCC, and note on it "Sanford Tally Sheet". Then mail your check to Sanford for Senate [address], or to the DSCC office in Washington.

Complaint, MUR 3620, Exhibit 4 (emphasis in original).

The complainant later supplemented the complaint with two documents relating to the Sanford campaign. First is the response

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card included with the invitation discussed above which reads, in part:

Yes, I would like to do my part to keep Terry Sanford and Democrats like him in the U.S. Senate. Please include me in the:

Majority Trust (\$20,000)  
Leadership Circle (\$15,000)  
Business Roundtable (\$5,000)

\* \* \*

Supplement to the Complaint, MUR 3620, Exhibit 1.

The second document provided in the supplemental complaint is an invitation to a reception honoring Senator Sanford. It reads, in full:

The Democratic Senatorial Campaign Committee  
cordially invites you to a reception  
with Senator George Mitchell, Majority Leader  
United States Senate  
honoring Senator Terry Sanford  
Friday, July 24 at five o'clock  
at the home of L. Richardson Preyer  
603 Sunset Drive  
Greensboro, North Carolina

DSCC membership required.

Supplement to Complaint, MUR 3620, Exhibit 2.

Finally, the NRSC's last exhibit, attached to the original complaint, is a DSCC invitation for a dinner honoring Lynn Yeakel. It reads, in full:

Norma and Irma Braman  
request the pleasure of your company  
at a dinner honoring  
Lynn Yeakel  
Candidate for United States Senate  
followed by

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The Philadelphia Eagles vs. The Dallas Cowboys

Monday evening, the fifth of October  
nineteen hundred and ninety-two

seven o'clock Dinner  
nine o'clock Kickoff

Veterans Stadium  
Philadelphia, Pennsylvania

Contribution \$5,000

RSVP [Phone Number]

Checks payable to "Democratic Senatorial  
Campaign Committee"

The response card accompanying the invitation makes no mention of Lynn Yeakel or the tally system. Complaint, MUR 3620, Exhibit 6.

Based on these solicitations, the complaint alleges that the DSCC and the Feinstein, Sanford and Yeakel campaigns evaded the statutory limits on campaign contributions by urging their "maxed-out" contributors to make tallied contributions to the DSCC, which were allegedly passed through to the candidates in the form of coordinated party expenditures.

The complaint in MUR 3617, which names only the Feinstein campaign as a Respondent, alleges that the Feinstein campaign accepted excessive contributions from: (1) its "maxed-out" donors who had also made a contribution the DSCC designated for Feinstein's "tally account"; and (2) donors who had not "maxed-out," but whose tallied contribution(s) exceeded the annual limit on contributions from individuals to the Feinstein campaign. In support, the complainant submitted the same invitation to the evening with Senator Bentsen that was submitted with MUR 3620, Exhibit 4. The complainant later supplemented his complaint by submitting another solicitation from the Feinstein campaign's

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"host committee." It reads, in relevant portion:

We are supporting Dianne Feinstein in her bid for the United States Senate. As members of the Bay Area Jewish community, we believe that Dianne Feinstein will serve as an articulate and forceful advocate for a strong United States/Israeli relationship.

\* \* \*

To win the election, Dianne needs our financial assistance.

Please consider joining us on the host committee for a fundraising reception to be held in Dianne's honor . . . .

You may wish to participate as a Benefactor, Patron or Sponsor by contributing or raising \$5,000, \$2,500 or \$1,000 respectively.

As an individual, you can contribute up to \$1,000 directly to the "Feinstein for Senate" Committee. Contributions in excess of \$1,000 must be made payable to the "Democratic Senatorial Campaign Committee" (DSCC) and marked "Feinstein Tally." The DSCC is the mechanism for U.S. Senate Candidates to receive their allocation from the Democratic party and Dianne is eligible to receive \$2.5 million from this committee. Our hope is that thought [sic] this event, we will take advantage of this opportunity to raise significant funds.

\* \* \*

Sincerely,

(signed)  
Henry Berman  
Chair, Host Committee

Enclosed with the invitation is a response card which reads:

Please reserve a space in my name . . . as a:

**BENEFACTOR:**

Enclosed is my check for \$5,000 (payable to the "Democratic Senatorial Campaign Committee" marked for Dianne's tally)

**PATRON:**

Enclosed is my check for \$2,500 (payable to the "Democratic Senatorial Campaign Committee" marked for Dianne's tally)

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SPONSOR:

Enclosed is my check for \$1,000 (payable to "Feinstein for Senate")

Supplement to Complaint, Exhibit 1.

Based on the language in the two solicitations, the complaint alleges that contributions made to the DSCC for the "Feinstein tally" were earmarked for Feinstein and should have been treated as contributions from the donor to the candidate, as required by 2 U.S.C. § 441a(a)(8). For that reason, the complaint alleges that the Feinstein campaign solicited and accepted excessive contributions from the candidate's maxed-out donors, and from individuals whose tallied contributions exceeded the statutory limit, in circumvention of the law establishing limits on individual contributions to a candidate's campaign.

3. MUR 3658

Finally, the NRSC filed a third complaint alleging that the Abrams '92 Committee also accepted excessive contributions "channeled" through the DSCC's tally system. In support, it submitted some of the same DSCC documents attached to the complaint in MUR 3620. In addition, the complainant submitted a newspaper article from the Albany Times-Union written during the New York Senate race. (The date is not specified.) Complaint, MUR 3658, Exhibit 1. According to the article, Abrams' opponent, Alfonse D'Amato, claimed that Abrams encouraged his backers to evade contribution limits by earmarking their donations to the DSCC. Specifically, the article reports, D'Amato questioned whether Abrams urged his maxed-out contributors to send more money

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to the DSCC with the understanding that the funds would go to Abrams. Abrams' chief fundraiser is quoted as saying that a contribution to a party's national committee is "a legitimate device for the supporters of a Senate campaign." Id. Moreover, a DSCC spokesperson denied that the money in question is earmarked. He explained that information concerning a donor's preferred candidate is used as a "secondary consideration" in allocating funds. Id.

The NRSC supplemented its complaint with a second Albany Times-Union article dated October 29, 1992, in which some of Abrams' donors acknowledged that they made donations to the DSCC with "either the understanding or expectation that their money would be then sent to Abrams." Supplement to Complaint, MUR 3658, Exhibit 1. Specifically, one of Abrams' maxed-out supporters, Fred Hochberg, who gave \$4,000 to the DSCC, is quoted as saying, "It was simply a way I could support more completely [Abrams'] efforts." Id. The article further reads:

Asked why he expected that his contribution would go to Abrams, Hochberg said he was "told that you can give to Abrams and to the [DSCC] and ask that they can [sic] tally that money for a particular candidate."

Hochberg said he was informed of the practice in conversations with representatives of Abrams' campaign and the [DSCC]. "They said I could leave it to the [DSCC's] discretion or 'tally it.' That's the term they used."

"You simply tell them to tally it for Bob Abrams . . . or any particular race you want the funds to be used for," Hochberg said.

Another maxed-out Abrams donor, Ronald Stanton, gave the committee \$20,000 -- the legal limit -- just a week after the September primary. "I gave with the full expectation that the money would go to help [Abrams]," said Stanton, chief executive officer of Transamonia Co., a chemical shipping and trading firm in Manhattan.

Asked how he had that expectation, Stanton said, "Well, I've been involved in other campaigns and that's

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just the way things seem to work." He said he did not specifically ask the committee to earmark his \$20,000 to Abrams, but it is clear that the committee knows he supports Abrams. "I think it was a given," he said, declining to elaborate.

Id. at 3.

A third Abrams supporter reportedly stated that he contributed to the DSCC with the "specific understanding" that his donation would be used to help Abrams:

"I was advised by the Abrams people," the donor said. The [DSCC] knew the donor was an Abrams backer because he wrote the check out to the [DSCC], then handed it over to the Abrams campaign, which in turn mailed his check and others to the [DSCC] -- a procedure Abrams fund-raisers have already acknowledged they use.

\* \* \*

Since the primary, according to federal records, more than \$450,000 was given to the DSCC by Abrams' deep-pocket backers. The DSCC, in turn, gave Abrams about \$700,000.

In the article, Abrams' campaign manager denied any earmarking. "They said the [DSCC] keeps track of a donor's address and preferred candidate but no one can specifically tell the [DSCC] how to spend its money. Chief among considerations is how close a race is and whether the Democratic candidate can win." Finally, at least one Abrams donor stated that he knew there was "no guarantee" that his contribution to the DSCC would end up with Abrams.

"I assumed that the [DSCC] is going to be helpful to all Senate candidates, including Bob [Abrams]. It is my hope and expectation that they will use some of those funds for Bob," said Steven Kumble, chairman of Lincolnshire Management, a Manhattan investment firm, who gave the committee \$7,500 on Sept. 30.

Id.

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Based on the memoranda distributed by the DSCC, and in light of the statements quoted in these articles, the complainant alleges that the Abrams campaign accepted excessive contributions and urged its individual contributors to evade the statutory limit on contributions to a candidate's committee.

## 2. The DSCC's Response

Broadly stated, the DSCC denies that the tallied contributions were earmarked because they were not "passed through" to the designated candidate. It argues that the designation for a candidate's tally sheet did not restrict the DSCC's discretion to determine where its money would be expended.

Specifically, the DSCC explains that the "Tally Sheet" is an accounting process established to allow the DSCC to keep track of the amount of money raised for the DSCC by a particular candidate. Response of DSCC at 1. That total is then taken into consideration as one of several factors used when the DSCC makes funding decisions for the coordinated party expenditures authorized by 2 U.S.C. § 441a(d). Id. According to the DSCC, tallied contributions are not segregated from other funds. All tallied contributions (and all other contributions) are deposited into the DSCC's general bank accounts and used entirely at the DSCC's discretion. Id. at 2. Furthermore, the DSCC states that money tallied for a specific candidate is neither "passed through" to the candidate, nor spent on a dollar-for-dollar exchange for the amount raised by a candidate. Id. On the contrary, it submits that its express policy is to refuse earmarked donations. When it receives a donation that appears to be earmarked, the DSCC

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sends a form letter intended to clarify the contributor's intent. In support, the DSCC attached two sample form letters. Apart from the fact that the form letters refer to different candidates, the text in the letters is identical. One reads, in part:

Thank you for your contribution to the Democratic  
Senatorial Campaign Committee. . . .

On the check you designate the contribution to  
Dianne Feinstein. We assume that you intend the  
"tallying" or crediting of the contribution to Dianne  
Feinstein, which will be taken into account by DSCC in  
allocating funds in support of his [sic] re-election.  
Contributions "tallied" to a Senator are a significant  
factor in the Committee's allocation decisions.

We note that the amount to be allocated is decided  
by the DSCC within its discretion. For this reason the  
DSCC does not treat a contribution such as yours as  
"earmarked" and does not accept earmarked contributions.

If you have a different expectation about the uses  
of this contribution, we will promptly refund it to you  
at your request. Please advise if this is the case.

If you have any questions, please do not hesitate  
to contact me . . . .

Sincere thanks,

(signed)  
Grace M. Coyle  
Finance Assistant

Id., Exhibit A.

According to the DSCC, tallied funds deposited into DSCC  
accounts are used for any of the DSCC's most pressing expenses,  
such as administrative expenses or 441a(d) expenditures on behalf  
of another candidate. Id. at 2. The DSCC proffers that there  
have been candidates who raised large amounts of money for the  
DSCC, but received little or no 441a(d) funding in return (such as  
a barely challenged incumbent Senator). Id. In other cases, some

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candidates who raised little or no money for the DSCC received full funding under the limits established for coordinated party expenditures. Id.

The DSCC further proffers that it considers a variety of factors in determining which candidates will receive 441a(d) funding. It looks at:

- Whether the race is winnable;
- Whether the candidate has a serious challenger;
- Whether the candidate has been successful in raising funds for his or her own campaign;
- Whether the candidate has assisted the DSCC in its fundraising efforts;
- Whether the DSCC has more pressing expenditures that must be made. Id. at 2-3. According to the DSCC, these criteria have been repeatedly emphasized to contributors and candidates. Id. at 3. It contends that, "the significance of the tally, in short, is its role as an incentive to its candidates to support its fundraising efforts." Id.

Next, the DSCC argues that to view the tally system as earmarking would significantly weaken the national party's role as a source of funding for its candidates. It emphasizes the special spending authority, far in excess of the limits applicable to contributions, conferred on national party committees by section 441a(d). In 1992 in California, for example, the coordinated expenditure limits for National and State party committees for

Senate candidates were approximately \$1.2 million each.<sup>1</sup> Id. The DSCC argues that it cannot reasonably be expected to raise millions of dollars without the assistance of the Senate candidates it is authorized to fund. Id.

In addition, the DSCC contends that the National Republican Senatorial Committee engages in the same or similar type of fundraising practice as challenged in the complaints. As evidence, it submits a solicitation dated October 9, 1992, from Republican Senate candidate Paul Coverdell. The solicitation reads, in part:

I tried to contact you by phone to update you on our campaign to unseat Democrat Senator Wyche Fowler of Georgia.

A recent poll by the Senatorial Committee indicates that Fowler is extremely vulnerable in this anti-incumbent election year. . . .

\* \* \*

This has led to the Senatorial Committee fully funding the race and putting over \$500,000 into the campaign for television. We are trying to double our budget for television and you can make a difference. Please give me a call at [phone number].

If you can allocate any amount of your Senatorial Trust funds to our campaign, or have some other means of

1. FEC Record, Volume 18, Number 3 (March, 1992) at 4.

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contributing, it could be the difference in our efforts to retire one of the Senate's most liberal members.

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I want to allocate \_\_\_\_\_ through the Senatorial Trust towards Paul's campaign.

I want to pledge a contribution of \_\_\_\_\_.

I would like to speak to Paul about his campaign. Please call my office to schedule a phone conversation.

Id., Exhibit B. There is nothing in the record which explains the specific nature of the "Senatorial Trust."

Finally, the DSCC cites MUR 377, in which it was alleged that a state party committee accepted earmarked contributions when it sponsored a fundraiser for the expressed purpose of assisting a defeated candidate to retire his campaign debt. In that case, the Commission found no probable cause to believe that the state party committee or the candidate's committee committed the alleged violations, and it directed this Office to draft appropriate regulations governing the applicability of the earmarking statute to section 441a(d) expenditures. It appears, however, that a rulemaking proceeding was never completed. In the instant cases, the DSCC urges that if the Commission wishes to address this question, a rulemaking -- not an enforcement action -- is the appropriate forum. Id. at 4.<sup>2</sup>

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2. Of significance here, in two cases after MUR 377, the Commission found that contributions made to a state party committee and subsequently expended by the party committee on the designated candidate were earmarked. See MUR 752 (1978) (contributions found to be earmarked when the date and amount of a contribution by a non-profit corporation whose avowed purpose was to raise funds for a particular Senate candidate coincided almost exactly with the date and amount of the

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### III. DISCUSSION

The available evidence supports the conclusion that the requests for "tallied" contributions were, in fact, solicitations for earmarked contributions. Correspondingly, it also supports a reason to believe finding that contributors who responded to the solicitations intended that their tallied contributions be earmarked for the designated candidate. Therefore, the contributions should have been treated as earmarked, viz. forwarded to the recipient candidate committees within 10 days, reported as earmarked by the conduit and the recipient, and applied to each contributor's per-candidate limit.<sup>3</sup> To illustrate, in the invitation to meet Senator Bentsen, the Feinstein campaign states,

For those of you who have already maxed out to my campaign, the DSCC tally is an avenue through which you can offer more support.

Complaint, MUR 3620, Exhibit 4. The Feinstein campaign's other solicitation states that,

As an individual, you can contribute up to \$1,000 directly to the 'Feinstein for Senate' Committee. Contributions in excess of \$1,000 must be made payable to the 'Democratic Senatorial Campaign Committee' and

(Footnote 2 continued from previous page)  
coordinated party expenditures made by the State committee on behalf of that candidate); and MUR 2632 (1990) (\$2,500 contribution to a state party committee found to be earmarked when the cover letter enclosing the check stated that the contribution was to "help in the election of John Evans to the United States Senate" and when upon receipt of the contribution, the state party committee expended more than \$12,000 on behalf of candidate John Evans for an "election day mailgram," and made other expenditures which appeared to relate to get-out-the vote activities on behalf of Evans).

3. See 2 U.S.C. § 441a(a)(8); and 11 C.F.R. §§ 110.6(b)(2)(iii), 102.8, and 110.6(c)(2).

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marked 'Feinstein Tally.' The DSCC is the mechanism for U.S. Senate Candidates to receive their allocation from the Democratic party and Dianne is eligible to receive \$2.5 million from this committee.

Supplement to Complaint, MUR 3617, Exhibit A (emphasis added).

The phrasing of these solicitations can be fairly read to state that contributions to the DSCC may be designated for the Feinstein campaign. The first states that the DSCC tally is an avenue through which maxed-out donors can "offer more support," strongly implying that the "support" will be given to the Feinstein campaign. Even more telling is the statement in the second solicitation that, "Contributions in excess of \$1,000 must be made payable to the Democratic Senatorial Campaign Committee." It appears that a contributor would reasonably interpret this to mean that if he or she wishes to contribute more than \$1,000 to the Feinstein campaign, the donor need only make the check payable to the DSCC and designate the Feinstein tally.

There is nothing in the record which establishes whether an explanation of the tally system was provided with the solicitations in question. Even if one was, the explanation may not have negated the suggestion of earmarking. Specifically, the DSCC's memorandum explaining the tally system states that:

This is a way for a donor to indicate their candidate preference(s) and how they [sic] would like their DSCC contribution distributed. Financial support to Senate candidates is determined by the Senators who comprise the allocation Committee of the DSCC. A candidate's "tallied" contributions are a key criterion considered in the Committee's allocation decisions.

Complaint, MUR 3620, Exhibit 2 (emphasis added).

While this paragraph explains that tallied contributions are

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one key criterion on which the DSCC's allocation decisions are based, it also states that the tally system is a method through which donors can indicate how "they would like their DSCC contribution distributed." This at least gives the impression that donors can designate the ultimate recipient of a contribution.

The DSCC's invitation to the Campaign Countdown is even more explicit:

The Campaign Countdown is designed for a Senate campaign's max-out donors and top contributors who are interested in further supporting their candidates through the DSCC's tally system. . . . The program is designed for donors who would like to tally \$10,000 or more in new money to their preferred Senate candidate(s). . . .

Complaint, MUR 3620, Exhibit 1 (emphasis added). Bearing in mind that this invitation was sent to contributors, it appears that the invitees could reasonably conclude that the "new money" referred to would be "new" or additional money to the designated candidate.

The solicitation from the Sanford campaign also suggests that a tallied donation will be directed to the candidate: "The DSCC may accept money above and beyond what a candidate raises. If you have given your personal maximum to a candidate, you may still give additional monies to the DSCC. Individuals may give a total of \$20,000 to the DSCC . . . ." It goes on to state that, "The DSCC will help the Sanford campaign according to need, winability [sic] and our tally sheet total. Terry Sanford's race will be close: the tally sheet will be of vital importance." Complaint, MUR 3620, Exhibit 4 (emphasis in original).

As partial support for the Sanford campaign's position that

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it did not represent that donors had any control over the expenditure of tallied contributions, this solicitation lists several factors on which the DSCC bases its funding decisions. Furthermore, the response card states, "Yes, I would like to do my part to keep Terry Sanford and Democrats like him in the U.S. Senate. Supplement to Complaint, MUR 3620, Exhibit 1 (emphasis added). Nonetheless, the statement that the DSCC will help the Sanford campaign according to "our tally sheet total" suggests that some, if not all, of the tallied contributions will be given to the Sanford campaign.<sup>4</sup>

In addition, the reported statements from some of the Abrams contributors, although purely anecdotal, may offer some insight into certain donors' intentions and understanding. Although one donor reportedly declared that he assumed that his donation to the DSCC would help all Democratic Senate candidates (Complaint, MUR 3658, Exhibit 1), three others reportedly said that they believed that their donations would be used for the Abrams campaign. One allegedly said that, "You simply tell [the DSCC] to tally it for Bob Abrams . . . or any particular race you want the funds to be used for." Another donor is quoted as saying, "I gave with the full expectation that the money would go to help [Abrams]." Finally, a third contributor reportedly stated that he had the

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4. A contribution is still earmarked even if the contributor's designation results in only part of the contribution being passed through. 11 C.F.R. § 110.6(b)(1) (defining "earmarked" as a designation or encumbrance, whether express or implied, which results in "all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee") (emphasis added).

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specific understanding that his donation would be used to help Abrams because "I was advised by the Abrams people." Id. If these statements are accurate, they add further evidence that at least some of the individuals who made contributions to the DSCC for Abrams' tally account did intend to earmark their contributions.

In summary, the evidence shows that the DSCC's tally system targeted a candidate's "maxed-out" contributors. Furthermore, apart from the invitation concerning Lynn Yeakel, all of the solicitations in these cases at least suggest that a tallied contribution will be used to help the designated candidate. Under these circumstances, it appears that contributors who made tallied contributions in response to the solicitations from the candidates and in response to the memoranda from the DSCC could reasonably intend and expect that a tallied contribution would be used to support the designated candidate. Indeed, the published statements from some of Abrams' supporters bolster this conclusion.

Consequently, it appears that donors who made a contribution to the DSCC that was tallied for a particular candidate intended at least an "implied encumbrance" within the meaning of the earmarking regulation, 11 C.F.R. § 110.6(b)(1). Correspondingly, it appears that the DSCC was the intended intermediary or conduit of the earmarked contributions within the meaning of 11 C.F.R. § 110.6(b)(2).

Furthermore, the DSCC's letter to contributors purportedly refusing earmarked donations does not refute the finding that the

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contributors intended that their tallied contributions be earmarked, nor does it properly "correct" such an intention. An example of the letter reads, in pertinent part,

On the check you designate the contribution to Dianne Feinstein. We assume that you intend the "tallying" or crediting of the contribution to Dianne Feinstein, which will be taken into account by DSCC in allocating funds in support of [her] re-election. . . .

[T]he DSCC does not treat a contribution such as yours as "earmarked" and does not accept earmarked contributions.

If you have a different expectation about the uses of this contribution, we will promptly refund it to you at your request. Please advise if this is the case.

Response of DSCC, Exhibit A.

First, this letter puts the onus on the contributor by requiring that the contributor take the affirmative step of contacting the DSCC if he or she has "a different expectation" about the uses of the contribution. It can be expected that many contributors would simply not bother to exert the effort to obtain a refund. Moreover, this letter is less than clear; it recognizes the previous designation and, to the extent it contradicts the candidate's solicitation, it does so only if the reader understands the DSCC's proposed distinction between "earmarking" and "designation." Despite the DSCC's proffer that its policy is to refuse earmarked contributions, at this stage of the proceedings, it still appears that sending a contribution that is "tallied" for a specific candidate to the DSCC constitutes earmarking.

Because it appears that in response to these solicitations the contributors earmarked their "tallied" contributions, there is

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reason to believe that the DSCC violated several provisions of the Act and the regulations. First, assuming that the tallied contributions were not "passed through" to the designated candidate, as the DSCC contends, it appears that that the DSCC failed to forward earmarked contributions to the candidate or candidate committee within the 10-day time period prescribed by 11 C.F.R. §§ 102.8 and 110.6(b)(2)(iii) and failed to report them in accordance with 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c)(1).

On the other hand, if the tallied contributions were "passed through" to the candidates in the form of coordinated party expenditures, as the complainants allege, it appears that the DSCC failed to report the source of the contribution and the intended recipient to the Federal Election Commission and to the intended recipient, as required by 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c)(1).

#### IV. CONCLUSION

Based on the available record, there is reason to believe that contributors who responded to the candidates' solicitations and made "tallied" contributions to the DSCC on behalf of those candidates made earmarked contributions. Accordingly, there is reason to believe that the DSCC either: (1) failed to forward earmarked contributions within the applicable 10-day time limit, as set forth in 11 C.F.R. §§ 102.8 and 110.6(b)(2)(iii), and failed to report the original source and intended recipient to the Commission and to the intended recipient, as required by 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c)(1); or (2) if the

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contributions in question were passed through to the candidates in the form of coordinated party expenditures, that the DSCC failed to report the source of the contributions and the intended recipient to the Commission and to the intended recipient, in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c)(1).

Accordingly, there is reason to believe that the DSCC and Donald J. Foley, as treasurer, violated 2 U.S.C. § 441a(a)(8); 11 C.F.R. § 110.6(c)(1); 11 C.F.R. § 110.6(b)(2)(iii); and 11 C.F.R. § 102.8.

MERGER OF MURS

After finding reason to believe that violations occurred in MUR 3617 and MUR 3658, the Commission voted to merge MUR 3617 and MUR 3658 into MUR 3620 and to hereafter refer to the entire matter as MUR 3620.

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20461

October 17, 1994

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

John R. Wallace, Esquire  
Kirby, Wallace, Creech,  
Sarda & Zaytoun  
P.O. Box 12065  
Raleigh, NC 27605

RE: MUR 3620  
Sanford for Senate Committee  
and Alton G. Buck, as  
treasurer

Dear Mr. Wallace:

On September 29, 1992, the Federal Election Commission ("Commission") notified your clients, the Sanford for Senate Committee and Alton G. Buck, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). In addition, you were notified of the supplements on November 4, 1992 and January 11, 1993. Copies of the complaint and supplements were provided with these notifications.

Upon further review of the allegations contained in the complaint and supplements, and information supplied by you, the Commission, on October 4, 1994, found that there is reason to believe the Sanford for Senate Committee and Alton G. Buck, as treasurer, violated 2 U.S.C. § 441a(f) of the Act and 11 C.F.R. § 110.6(c)(2) of the Commission's regulations. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the Order and Subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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Mr. Wallace  
Page 2

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 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 investigation to be made public. If you have any questions, please contact Mary Ann Bumgarner, the attorney assigned to this matter, at (202) 219-3400.

For the Commission,

  
Trevor Potter  
Chairman

Enclosures  
Order and Subpoena  
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

)  
)  
) MUR 3620  
)

SUBPOENA TO PRODUCE DOCUMENTS  
ORDER TO SUBMIT WRITTEN ANSWERS

TO: The Sanford for Senate Committee and Alton G.  
Buck, as treasurer  
c/o John R. Wallace  
KIRBY, WALLACE, CREECH, SARDA & ZAYTOUN  
3605 Glenwood Avenue, Suite 390  
Raleigh, N.C. 27612

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in  
furtherance of its investigation in the above-captioned matter,  
the Federal Election Commission hereby orders you to submit  
written answers to the questions attached to this Order and  
subpoenas you to produce the documents requested in the attachment  
to this Subpoena. Legible copies which, where applicable, show  
both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and forwarded to  
the Office of the General Counsel, Federal Election Commission,  
999 E Street, N.W., Washington, D.C. 20463, along with the

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MUR 3620

The Sanford for Senate Committee and  
Alton G. Buck, as treasurer  
Page 2

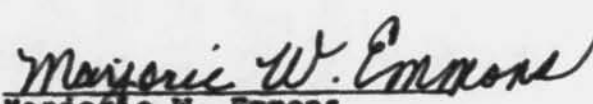
requested documents within 30 days of receipt of this Order and  
Subpoena.

WHEREFORE, the Chairman of the Federal Election Commission  
has hereunto set his hand in Washington, D.C. on this 14<sup>th</sup> day of  
October, 1994.

For the Commission,

  
\_\_\_\_\_  
Trevor Potter  
Chairman

ATTEST:

  
\_\_\_\_\_  
Marjorie W. Emmons  
Secretary to the Commission

Attachment  
Questions and Document Requests

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INSTRUCTIONS

Each answer shall be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

Each answer shall be preceded by the question or interrogatory to which the answer pertains.

Please organize all documents and label each group of documents to correspond with the specific Request for Production to which each document or group of documents pertains.

In answering these interrogatories and requests for production of documents, furnish all documents and all information, however obtained, that is in your possession, or known by or otherwise available to you, or in the possession of or known by or otherwise available to your attorneys, agents, employees, or other representatives of you and/or your attorneys.

The response to each interrogatory shall set forth separately the identification of each person capable of furnishing testimony concerning the response given. In addition, the response shall identify every individual who provided information, documentation, or other input relating to the response, and those who assisted in drafting the interrogatory response.

Unless otherwise indicated, each discovery request shall refer to the time period covering the 1992 general election campaign.

If you cannot answer any of the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder. In addition, state what information or knowledge you have concerning the unanswered portion and describe the specific efforts made by you or anyone on your behalf to ascertain the information. Also, state as definitively as possible when you anticipate obtaining the information and supplementing your response.

If you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient

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MUR 3620

The Sanford for Senate Committee and  
Alton G. Buck, as treasurer  
Page 4

detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

The following interrogatories and requests for production of documents are continuing in nature, requiring you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information subsequent to your original answers. Include in any supplemental answers the date and manner in which such further or different information came to your attention.

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DEFINITIONS

For purposes of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" or "your" shall mean the named respondents in this action to whom these discovery requests are addressed, including all persons who act in any capacity for the respondents or in any relationship to the respondents, including officers, employees, agents or attorneys and/or others who act on the respondents' behalf.

The "DSCC" shall mean the Democratic Senatorial Campaign Committee, including all persons who act in any capacity for the DSCC or in any relationship to the DSCC, including officers, employees, agents or attorneys and/or others who act on behalf of the DSCC.

The "Sanford campaign" shall mean the candidate and the Sanford for Senate Committee, Terry Sanford's authorized campaign committee, including all persons who act in any capacity for the Sanford campaign or in any relationship to the Sanford campaign including officers, employees, agents or attorneys and/or others who act on behalf of the Sanford campaign.

"Coordinated party expenditures" shall refer to those expenditures made by the DSCC in connection with the 1992 general election campaign of Democratic candidates for election to the office of U.S. Senator pursuant to 2 U.S.C. § 441a(d)(3)(A).

The "tally sheet" or "tally sheet program" or "tally program" shall refer to the "Tally Sheet" described in the DSCC's Response dated November 9, 1992 and incorporated by the Sanford for Senate Committee in its response dated November 18, 1992.

A "tallied contribution" shall refer to a contribution to the DSCC that the contributor has indicated is to be tallied for a particular candidate's tally sheet.

"Democratic Senate candidate" shall refer to any Democratic candidate who ran for election to the office of U.S. Senator during the 1992 general election campaign including all persons who act in any capacity for the Democratic Senate candidate or in any relationship to the Democratic Senate candidate,

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including officers, employees, agents or attorneys and/or others who act on behalf of the Democratic Senate candidate and/or his or her campaign.

"Candidate committee" or "candidate's committee" shall refer to the authorized campaign committee of any Democratic candidate who ran for election to the office of Senator during the 1992 general election campaign including all persons who act in any capacity for the candidate committee or in any relationship to the candidate committee, including officers, employees, agents or attorneys and/or others who act on behalf of the candidate committee.

"Person" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Identify" with respect to a person shall mean to state the full name, the most recent business and residence addresses, the most recent business and home telephone numbers, the person's position and job description at the time in question with respect to the interrogatory, the present occupation or position of such person, and the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean to state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, and the number of pages comprising the document.

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The Sanford for Senate Committee and  
Alton G. Buck, as treasurer

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"And" as well as "or" shall be construed either disjunctively or conjunctively, as necessary to bring within the scope of these interrogatories and requests for the production of documents any information and documents which may otherwise be construed to be outside their scope.

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BEFORE THE FEDERAL ELECTION COMMISSION  
INTERROGATORIES AND REQUESTS FOR DOCUMENTS

MUR 3620  
The Sanford for Senate Committee and  
Alton G. Buck, as treasurer

1. Please describe in full and complete detail when and how the DSCC informed the Sanford campaign of the DSCC's tally sheet program.
2. Please describe when and how the DSCC recruited or encouraged the Sanford campaign to participate in the tally sheet program (e.g., telephone calls, written solicitations, etc.).
3. Please state whether the DSCC offered, explicitly or impliedly, any incentive for participating in the tally sheet program to the Sanford campaign.
4. If the answer to interrogatory number 3 is in the affirmative:
  - a. Please describe in full and complete detail each such incentive;
  - b. Please identify each and every person to whom the incentive(s) was offered or communicated;
  - c. Please describe how and when the DSCC communicated the incentive(s) to each of the persons identified in response to interrogatory number 4(b).
5. With regard to the solicitation entitled "Terry Sanford's Campaign for U.S. Senate" attached as Exhibit 5 to the complaint in MUR 3620 (the "solicitation"), please provide the following information:
  - a. Please identify all persons who were involved and/or who had responsibility, including supervisory responsibility, for writing, producing and/or distributing the solicitation and please specify each person's role.
  - b. Please state the total number of solicitations mailed or otherwise distributed; what was the source of the distribution list?

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- 9 5 0 4 3 6 9 0 2 4 9
- c. Of those solicited, how many persons had given the maximum limit to the Sanford campaign?
  - d. Please describe in full and complete detail how the Sanford campaign determined to whom the solicitation would be mailed or otherwise distributed. Was a person's status as a "maxed out" contributor to the Sanford campaign a factor in being included on the distribution list?
  - e. Please state whether the Sanford campaign produced and distributed more than one version of the solicitation. If so, identify and produce a copy of each.
  - f. Identify and produce a copy of all documents that accompanied the solicitation.
  - g. Please state the total number of tallied contributions made in response to the solicitation, the amount of each such tallied contribution and the identity of each contributor who made a tallied contribution in response to the solicitation.
  - h. Please state the total number of non-tallied contributions made in response to the solicitation, the amount of each such non-tallied contribution and the identity of each contributor who made a non-tallied contribution in response to the solicitation.

7. Did the DSCC draft, prepare, supply, or otherwise participate in the production of any solicitation issued by the Sanford campaign that referred to the tally program?

8. If the answer to interrogatory number 7 is in the affirmative:

- a. Please identify and produce a copy of each such solicitation and/or draft solicitation provided by the DSCC;
- b. For each such solicitation, identify each and every person who was involved in drafting or preparing the solicitation and describe the nature of each person's involvement.



9. Please state whether the Sanford campaign sent different solicitations to contributors who had contributed the statutory maximum to the Sanford campaign and to contributors who had not. If so, please describe in full and complete detail how or in what ways they differed.

10. If the answer to interrogatory number 9 is in the affirmative, please identify and produce a copy of each solicitation sent to those contributors who had contributed the statutory maximum to the Sanford campaign.

11. Please state the date and amount of contributions made to the DSCC that were tallied for the Sanford campaign.

12. Please describe, in full and complete detail, how the Sanford campaign recorded, memorialized, or otherwise kept records of the amount of contributions made to the DSCC that were tallied for the Sanford campaign, and please provide a copy of any documents on which such records were kept.

13. Please describe, in full and complete detail, how the DSCC advised the Sanford campaign of the amount of contributions to the DSCC that were tallied for the Sanford campaign.

14. Please describe, in full and complete detail, what the Sanford campaign communicated to potential contributors about the DSCC's "tally sheet program" or the option of "tallying" a contribution to the DSCC for the Sanford campaign, and the method(s) by which that information was communicated.

15. Please state whether you contend that tallied contributions are not earmarked contributions, as defined and regulated by 2 U.S.C. § 441a(a)(8) and the governing regulations. If you so contend:

- a. Please state and describe in full and complete detail each and every fact which supports this contention.
- b. Please identify and produce each and every document which you contend supports this contention.

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REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Please provide a copy of each and every version of every solicitation, mailing, or other document that the Sanford campaign sent to potential contributors in connection with the 1992 general election campaign which refers to the tally program or which discusses or describes the option of tallying a contribution for the Sanford campaign's tally account.

2. Please provide a copy of each and every version of every memorandum, letter, or other document that the DSCC sent to the Sanford campaign explaining and/or concerning the tally sheet program.

3. Please provide a copy of all documents pertaining to the tally sheet program, including, but not limited to:

- a. any and all agreements between the DSCC and the Sanford campaign;
- b. correspondence between the DSCC and the Sanford campaign;
- c. documents from the DSCC advising the Sanford campaign of the amount of contributions to the DSCC tallied for the Sanford campaign;
- d. telephone memoranda and/or other written memoranda pertaining to the tally program or its implementation;
- e. letters or sample letters soliciting tallied contributions;
- f. other documents or sample documents soliciting tallied contributions;
- g. telephone scripts for calls to contributors; and
- h. thank-you letters or sample thank-you letters sent to contributors.

4. Please provide a copy of each and every document the DSCC sent to the Sanford campaign relating to the amount of coordinated party expenditures the DSCC had spent or had determined to spend on behalf of the Sanford campaign.

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MUR 3620

The Sanford for Senate Committee and  
Alton G. Buck, as treasurer

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5. Please provide a copy of all documents prepared by the Sanford campaign relating to or discussing the amount of coordinated party expenditures to be spent by the DSCC on behalf of the Sanford campaign.

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**MUR: 3620**

**RESPONDENTS:** The Sanford for Senate Committee  
and Alton G. Buck, as treasurer

**I. GENERATION OF MATTER**

This matter arises from a complaint filed by the National Republican Senatorial Committee ("NRSC") with the Federal Election Commission ("Commission") against the Sanford for Senate Committee (the "Sanford campaign") during the 1992 election cycle. At issue is whether certain contributions made to the Democratic Senatorial Campaign Committee ("DSCC") were earmarked for Terry Sanford.

The complaint challenges the DSCC's "tally system," an accounting method used to keep track of the total funds raised for the DSCC by a particular candidate. It alleges that during the 1992 Senate race, the DSCC accepted contributions designated for Terry Sanford's tally account, which contributions were allegedly "passed through" to the candidate in the form of coordinated party expenditures. The complainant charges that this practice violates 2 U.S.C. § 441a(a)(8), which mandates that an "earmarked" contribution made through an intermediary be treated as a contribution from the donor to the candidate, and 11 C.F.R. § 110.6(c)(1)(i), which requires that the intermediary of an earmarked contribution disclose the source of the contribution and the recipient candidate. The complaint further alleges that by

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receiving coordinated party expenditures from the DSCC, Terry Sanford accepted excessive contributions from: (1) donors whose tallied contribution(s) to the DSCC exceeded the statutory limit for an individual's contributions to the designated candidate; and (2) donors who had already made the maximum allowable direct contributions to the Sanford campaign (informally referred to by the Respondent as "maxed-out" or "max-out" contributors).

## II. FACTUAL AND LEGAL ANALYSIS

### A. The Act

The Federal Election Campaign Act of 1971, as amended, ("the Act") establishes dollar limits on contributions to candidates for Federal office. An individual may not contribute to a candidate (and the candidate's authorized committees) more than \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). In addition, an individual may contribute up to \$20,000 per calendar year to political committees established and maintained by a national political party that are not the authorized political committees of any candidate. 2 U.S.C. § 441a(a)(1)(B). The Act further provides that a candidate may not knowingly accept, and a political committee may not knowingly make, a contribution or expenditure in violation of the provisions of the Act. 2 U.S.C. § 441a(f).

A contribution made by a person, either directly or indirectly, on behalf of a particular candidate, which is in any way earmarked or otherwise directed through an intermediary or conduit, is treated as a contribution from such person to the candidate. 2 U.S.C. § 441a(a)(8). "Earmarked" means "a designation, instruction, or encumbrance, whether direct or

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indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee." 11 C.F.R. § 110.6(b)(1).

A "conduit" or "intermediary" means any person who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee (with certain exceptions not applicable here). 11 C.F.R. § 110.6(b)(2). In addition, 11 C.F.R. § 110.6(b)(2)(iii) provides that any person who receives an earmarked contribution shall, among other requirements, forward such earmarked contribution to the candidate or authorized committee in accordance with 11 C.F.R. § 102.8. Section 102.8 provides, inter alia, that earmarked contributions must be forwarded no later than 10 days after receipt.

Furthermore, the intermediary or conduit of an earmarked contribution must report the source of the contribution and the intended recipient to the Federal Election Commission and to the intended recipient. 2 U.S.C. § 441a(a)(8). See also 11 C.F.R. § 110.6(c)(1). Similarly, the recipient candidate committee must report earmarked contributions and each conduit or intermediary who forwards one or more earmarked contributions which in the aggregate exceed \$200 in any calendar year in accordance with 11 C.F.R. § 110.6(c)(2).

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In addition, the Act authorizes the national and state committees of a political party to make additional expenditures in support of that party's candidates for federal office:

Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, . . . may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2) and (3) of this subsection.

2 U.S.C. § 441a(d)(1).

Paragraph (2) of this subsection applies to Presidential candidates and is not relevant here. Paragraph (3), which concerns candidates for Senate, provides that the national and State committees of a political party may each make expenditures which do not exceed the greater of \$20,000 or two cents multiplied by the voting age population of the State. See 2 U.S.C. § 441a(d)(3)(A) and 11 C.F.R. §§ 110.7(b)(1) and (b)(2)(i). These expenditures are generally referred to as "441a(d) expenditures" or "coordinated party expenditures." If a state party committee chooses not to make the expenditures permitted by section 441a(d), it may designate an agent, such as a national committee of the party, to make coordinated party expenditures on its behalf. FEC v. Democratic Senatorial Campaign Comm., 454 U.S. 27 (1981). The national committees are not capable of making independent expenditures in connection with the general election campaign of a candidate for Federal office. 11 C.F.R. § 110.7(b)(4).

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**B. The Complaint**

The complainant charges the DSCC with failing to report earmarked contributions; it charges the Sanford campaign with accepting excessive contributions from donors whose tallied contributions to the DSCC exceeded the statutory maximum for an individual's contributions to a candidate, and from donors who had already made the maximum contribution to the Sanford campaign. The complainant submitted several exhibits in support of its allegations against the Sanford campaign.

The first three exhibits are solicitations and memoranda from the DSCC. Exhibit one is an invitation from the DSCC to contributors for an event entitled "U.S. Senate Campaign Countdown," which is described as a:

special conference designed to provide strategic information on the 1992 U.S. Senate campaigns followed by a special program of cocktails, dinner and breakfast at the private homes of Senators Kennedy, Robb and Rockefeller.

The invitation goes on to discuss the DSCC's tally system:

The Campaign Countdown is designed for a Senate campaign's max-out donors and top contributors who are interested in further supporting their candidates through the DSCC's tally system. The DSCC provides donors with the opportunity to tally their contributions to the Democratic Senate nominees of their choice. The program is designed for donors who would like to tally \$10,000 or more in new money to their preferred Senate candidate(s) and who would like to join one of the DSCC's elite donor programs.

Complaint, Exhibit 1.

The second exhibit is a memorandum from the DSCC explaining the function of the Democratic Senatorial Campaign Committee in

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general, and the tally option specifically. It reads, in relevant portion:

**The Democratic Senatorial Campaign Committee**

**THE TALLY OPTION**

**WHAT ROLE DOES THE DSCC PLAY?**

**Funding Democratic Senate Nominees**

The primary function of the Democratic Senatorial Campaign Committee is to provide funding for Democratic Senate candidates in their quest for the U.S. Senate. The Finance Staff of the DSCC raises funds which are allocated to targeted Democratic Senate races based on the campaign's need and winability [sic]. These funds provide nominees with an invaluable source of additional funding which helps them keep their competitive edge . . . .

**WHY GIVE TO THE DSCC?**

Under FEC regulations, an individual may contribute a maximum of \$2000 to a Senate candidate. (\$1000 in the primary and another \$1000 to a general campaign fund). However, an individual may contribute up to \$20,000 annually to a political party organization like the DSCC. PAC's may contribute a maximum of \$15,000 annually to the DSCC. The Committee in turn allocates those funds to Democratic Senate candidates who are up for election in the current cycle. An individual (or PAC) is able to make the maximum legal contribution to assist Democratic Senate candidates financially by contributing to the DSCC.

**WHAT DOES "TALLY" MEAN?**

When contributing to the DSCC, a donor may request that his or her contribution be "tallied" to the Democratic Senate candidate(s) of their choice. This is a way for a donor to indicate their candidate preference(s) and how they would like their DSCC contribution distributed. Financial support to Senate candidates is determined by the Senators who comprise the allocation Committee of the DSCC. A candidate's "tallied" contributions are a key criterion considered in the Committee's allocation decisions.

\* \* \*

Complaint, Exhibit 2.

The third exhibit to the complaint is a memorandum from the DSCC to "Senate AA's & Campaign Finance Directors" concerning the

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"Campaign Countdown" program. The relevant portions read:

Please join the DSCC for a special program that will be of great benefit to your Senate campaign.

The program is designed for high dollar and max-out contributors to 1992 Senate campaigns.

On Wednesday afternoon September 9, the DSCC will host a campaign conference covering the latest information on the 1992 Senate races . . . .

That evening, donors and contributors will be invited to a special evening of cocktails at the McLean home of Senator & Mrs. Ted Kennedy (6:30 - 8:00 pm) followed by dinner at the home of Senator & Mrs. Charles S. Robb. The following morning, guests will be invited to breakfast at the home of Senator & Mrs. Jay Rockefeller.

The program is specifically designed to encourage max-out and high-dollar contributors to tally \$10,000 or more (per couple) in new money to their preferred Democratic Senate candidate(s).

This is an ideal opportunity for you to cultivate your high dollar prospects and encourage them to support their candidate(s) through the DSCC's tally system.

\* \* \*

Complaint, Exhibit 3.

Furthermore, the complainant attaches a solicitation from the Sanford campaign which reads, in relevant part:

**TERRY SANFORD'S CAMPAIGN FOR U.S. SENATE  
and the  
Democratic Senatorial Campaign Committee**

The Democratic Senatorial Campaign Committee (DSCC) works to elect Democratic Senators across the country. One of their tools is financial. The DSCC may accept money above and beyond what a candidate raises. If you have given your personal maximum to a candidate, you may still give additional monies to the DSCC. Individuals may give a total of \$20,000 to the DSCC; Political Action Committees may give up to \$15,000. If specified, such contributions may be "tallied" to Terry Sanford's DSCC tally sheet.

The DSCC will help the Sanford campaign according to need, winability [sic], and our tally sheet total.

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Terry Sanford's race will be close: the tally sheet will be of vital importance.

\* \* \*

Electing a Democratic majority in the Senate is vital business: Terry Sanford needs to be in that majority. To help him, and to help the DSCC, please make your check to DSCC, and note on it "Sanford Tally Sheet". Then mail your check to Sanford for Senate [address], or to the DSCC office in Washington.

Complaint, Exhibit 5 (emphasis in original).

The complainant later supplemented the complaint with two additional documents relating to the Sanford campaign. The first is the response card included with the invitation discussed above, which reads, in part:

Yes, I would like to do my part to keep Terry Sanford and Democrats like him in the U.S. Senate. Please include me in the:

Majority Trust (\$20,000)  
Leadership Circle (\$15,000)  
Business Roundtable (\$5,000)

\* \* \*

Supplement to Complaint dated January 8, 1993, Exhibit 1.

Exhibit 2 to the the supplemental complaint is an invitation to a reception honoring Senator Sanford. It reads, in full:

The Democratic Senatorial Campaign Committee  
cordially invites you to a reception  
with Senator George Mitchell, Majority Leader  
United States Senate  
honoring Senator Terry Sanford

Friday, July 24 at five o'clock  
at the home of L. Richardson Preyer  
603 Sunset Drive  
Greensboro, North Carolina

DSCC membership required.

Supplement to Complaint, Exhibit 2.

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Based on the language of the solicitations, the complaint alleges that contributions made to the DSCC for the "Sanford tally" were earmarked for Sanford and should have been treated as contributions from the donor to the candidate, as required by 2 U.S.C. § 441a(a)(8). For that reason, the complaint alleges that the Sanford campaign solicited and accepted excessive contributions in circumvention of the law establishing limits on individual contributions to the candidate's campaign.

C. The Responses

1. The DSCC

In its response, the DSCC explains that the "Tally Sheet" is an accounting process established to allow the DSCC to keep track of the amount of money raised for the DSCC by a particular candidate. Response of the DSCC at 1. That total is then taken into consideration as one of several factors used when the DSCC makes funding decisions for the coordinated party expenditures authorized by 2 U.S.C. § 441a(d). Id. According to the DSCC, tallied contributions are not segregated from other funds. All tallied contributions (and all other contributions) are deposited into the DSCC's general bank accounts and used entirely at the DSCC's discretion. Id. at 2. Furthermore, the DSCC states that money tallied for a specific candidate is neither "passed through" to the candidate, nor spent on a dollar-for-dollar exchange for the amount raised by a candidate. Id. On the contrary, it submits that its express policy is to refuse earmarked donations. When it receives a donation that appears to be earmarked, the DSCC sends a form letter intended to clarify the contributor's intent.

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In support, the DSCC attached two sample form letters. Apart from the fact that the form letters refer to different candidates, the text in the letters is identical. One reads, in part:

Thank you for your contribution to the Democratic Senatorial Campaign Committee. . . .

On the check you designate the contribution to Dianne Feinstein. We assume that you intend the "tallying" or crediting of the contribution to Dianne Feinstein, which will be taken into account by DSCC in allocating funds in support of his [sic] re-election. Contributions "tallied" to a Senator are a significant factor in the Committee's allocation decisions.

We note that the amount to be allocated is decided by the DSCC within its discretion. For this reason the DSCC does not treat a contribution such as yours as "earmarked" and does not accept earmarked contributions.

If you have a different expectation about the uses of this contribution, we will promptly refund it to you at your request. Please advise if this is the case.

If you have any questions, please do not hesitate to contact me at (phone number). I appreciate your cooperation in this matter.

Sincere thanks,

(signed)  
Grace M. Coyle  
Finance Assistant

Id., Exhibit A.

According to the DSCC, tallied funds deposited into DSCC accounts are used for any of the DSCC's most pressing expenses, such as administrative expenses or 441a(d) expenditures on behalf of another candidate. Id. at 2. The DSCC proffers that there have been candidates who raised large amounts of money for the DSCC, but received little or no 441a(d) funding in return (such as a barely challenged incumbent Senator). Id. In other cases, some

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candidates who raised little or no money for the DSCC received full funding under the limits established for coordinated party expenditures. Id.

The DSCC further proffers that it considers a variety of factors in determining which candidates will receive 441a(d) funding. It looks at:

- Whether the race is winnable;
- Whether the candidate has a serious challenger;
- Whether the candidate has been successful in raising funds for his or her own campaign;
- Whether the candidate has assisted the DSCC in its fundraising efforts;
- Whether the DSCC has more pressing expenditures that must be made. Id. at 2-3.

According to the DSCC, these criteria have been repeatedly emphasized to contributors and candidates. Id. at 3. It contends that, "the significance of the tally, in short, is its role as an incentive to its candidates to support its fundraising efforts." Id.

Next, the DSCC argues that to view the tally system as earmarking would significantly weaken the national party's role as a source of funding for its candidates. It emphasizes the special spending authority, far in excess of the limits applicable to contributions, conferred on national party committees by section 441a(d). In 1992 in California, for example, the coordinated expenditure limits for National and State party committees for

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Senate candidates were approximately \$1.2 million each.<sup>1</sup> Id. The DSCC argues that it cannot reasonably be expected to raise millions of dollars without the assistance of the Senate candidates it is authorized to fund. Id.

In addition, the DSCC contends that the National Republican Senatorial Committee engages in the same type of fundraising practice challenged in the complaints. As evidence, it submits a solicitation dated October 9, 1992, from Republican Senate candidate Paul Coverdell. The solicitation reads, in part:

I tried to contact you by phone to update you on our campaign to unseat Democrat Senator Wyche Fowler of Georgia.

A recent poll by the Senatorial Committee indicates that Fowler is extremely vulnerable in this anti-incumbent election year. . . .

\* \* \*

This has led to the Senatorial Committee fully funding the race and putting over \$500,000 into the campaign for television. We are trying to double our budget for television and you can make a difference. Please give me a call at [phone number].

If you can allocate any amount of your Senatorial Trust funds to our campaign, or have some other means of contributing, it could be the difference in our efforts to retire one of the Senate's most liberal members.

---

\_\_\_\_\_ I want to allocate \_\_\_\_\_ through the Senatorial Trust towards Paul's campaign.

\_\_\_\_\_ I want to pledge a contribution of \_\_\_\_\_.

\_\_\_\_\_ I would like to speak to Paul about his campaign. Please call my office to schedule a phone conversation.

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1. FEC Record, Volume 18, Number 3 (March, 1992) at 4.

Id., Exhibit B. There is nothing in the record which explains the specific nature of the "Senatorial Trust."

Finally, the DSCC cites MUR 377, in which it was alleged that a state party committee accepted earmarked contributions when it sponsored a fundraiser for the expressed purpose of assisting a defeated candidate to retire his campaign debt. In that case, the Commission found no probable cause to believe that the state party committee or the candidate's committee committed the alleged violations, and it directed this Office to draft appropriate regulations governing the applicability of the earmarking statute to section 441a(d) expenditures. It appears, however, that a rulemaking proceeding was never completed. In the instant case, the DSCC urges that if the Commission wishes to address this question, a rulemaking -- not an enforcement action -- is the appropriate forum. Id. at 4.<sup>2</sup>

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2. Of significance here, in two cases after MUR 377, the Commission found that contributions made to a state party committee and subsequently expended by the party committee on the designated candidate were earmarked. See MUR 752 (1978) (contributions found to be earmarked when the date and amount of a contribution by a non-profit corporation whose avowed purpose was to raise funds for a particular Senate candidate coincided almost exactly with the date and amount of the coordinated party expenditures made by the State committee on behalf of that candidate); and MUR 2632 (1990) (\$2,500 contribution to a state party committee found to be earmarked when the cover letter enclosing the check stated that the contribution was to "help in the election of John Evans to the United States Senate" and when upon receipt of the contribution, the state party committee expended more than \$12,000 on behalf of candidate John Evans for an "election day mailgram," and made other expenditures which appeared to relate to get-out-the vote activities on behalf of Evans).

## 2. The Sanford Campaign

The Sanford campaign incorporates the arguments presented by the DSCC. In addition, it proffers that the Sanford campaign understood that the DSCC does not accept earmarked contributions, and "has never expected that funds raised by the Sanford Committee for the benefit of the DSCC would pass through the DSCC back to the Sanford Committee." Response of the Sanford for Senate Committee at 2. Furthermore, it submits that,

The DSCC has always asserted its decision making authority with respect to funds in its treasury, and candidate committees have never been led to believe [by the DSCC] that they could control DSCC allocations of § 441a(d) money by their fund raising efforts in behalf of the DSCC. Indeed, Democratic Senate candidates recognize that the prospects for success in races around the country should be determinative of DSCC decisions to expend DSCC funds.

Id. at 2-3. Finally, the Sanford campaign notes that its solicitation states that the "DSCC may accept money above and beyond what a candidate raises." This language, it argues, does not suggest to contributors that donations to the DSCC will be passed through to the Sanford campaign.

## III. DISCUSSION

The information disseminated by the DSCC and the plain language of the Sanford campaign's solicitation supports the conclusion that the Sanford campaign's request for "tallied" contributions was, in fact, a solicitation for earmarked contributions. Correspondingly, the facts also support the conclusion that contributors who responded to the solicitation intended that their tallied contributions be earmarked for the Sanford campaign. Therefore, the contributions should have been

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treated as earmarked, viz. forwarded to the recipient candidate committee within 10 days, reported as earmarked by the conduit and the recipient, and applied to each contributor's per-candidate limit.<sup>3</sup>

To illustrate, the solicitation from the Sanford campaign suggests that a tallied donation will be directed to the candidate: "The DSCC may accept money above and beyond what a candidate raises. If you have given your personal maximum to a candidate, you may still give additional monies to the DSCC. Individuals may give a total of \$20,000 to the DSCC . . . ." It goes on to state that, "The DSCC will help the Sanford campaign according to need, winability [sic] and our tally sheet total. Terry Sanford's race will be close: the tally sheet will be of vital importance." Complaint, Exhibit 4 (emphasis in original).

As partial support for the Sanford campaign's position that it did not represent that donors had any control over the expenditure of tallied contributions, this solicitation lists several factors on which the DSCC bases its funding decisions. Furthermore, the response card states, "Yes, I would like to do my part to keep Terry Sanford and Democrats like him in the U.S. Senate." Supplement to Complaint, Exhibit 1 (emphasis added). Nonetheless, the statement that the DSCC will help the Sanford campaign according to "our tally sheet total" suggests that some, if not all, of the tallied contributions will be given to the

3. See 2 U.S.C. § 441a(a)(8); and 11 C.F.R. §§ 110.6(b)(2)(iii), 102.8, and 110.6(c)(2).



Sanford campaign.<sup>4</sup>

In addition, there is nothing in the record which establishes whether an explanation of the tally system was provided with the solicitation in question. Even if one was, the explanation may not have negated the suggestion of earmarking. Specifically, the DSCC's memorandum explaining the tally system states that:

This is a way for a donor to indicate their candidate preference(s) and how they [sic] would like their DSCC contribution distributed. Financial support to Senate candidates is determined by the Senators who comprise the allocation Committee of the DSCC. A candidate's "tallied" contributions are a key criterion considered in the Committee's allocation decisions.

Complaint, Exhibit 2 (emphasis added).

While this paragraph explains that tallied contributions are one key criterion on which the DSCC's allocation decisions are based, it also states that the tally system is a method through which donors can indicate how "they would like their DSCC contribution distributed." This at least gives the impression that donors can designate the ultimate recipient of a contribution.

The DSCC's invitation to the Campaign Countdown is even more explicit:

The Campaign Countdown is designed for a Senate campaign's max-out donors and top contributors who are

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4. A contribution is still earmarked even if the contributor's designation results in only part of the contribution being passed through. 11 C.F.R. § 110.6(b)(1) (defining "earmarked" as a designation or encumbrance, whether express or implied, which results in "all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee") (emphasis added).

interested in further supporting their candidates through the DSCC's tally system. . . . The program is designed for donors who would like to tally \$10,000 or more in new money to their preferred Senate candidate(s). . . .

Complaint, Exhibit 1 (emphasis added). Bearing in mind that this invitation was sent to contributors, it appears that the invitees could reasonably conclude that the "new money" referred to would be "new" or additional money to the designated candidate.

In summary, the evidence shows that the DSCC's tally system targeted a candidate's "maxed-out" contributors. Furthermore, the DSCC documents and the Sanford solicitation at least suggest that a tallied contribution will be used to help the designated candidate. Based on the totality of these circumstances, it appears that donors who made tallied contributions to the DSCC in response to the solicitation from the Sanford campaign could reasonably intend and expect that a tallied contribution would be used to support that candidate. Consequently, it appears that donors who made a contribution to the DSCC that was tallied for the Sanford campaign intended at least an "implied encumbrance" within the meaning of the earmarking regulation, 11 C.F.R. § 110.6(b)(1). Correspondingly, it appears that the DSCC was the intended intermediary or conduit of the earmarked contributions within the meaning of 11 C.F.R. § 110.6(b)(2).

Furthermore, the DSCC's letter to contributors purportedly refusing earmarked donations does not refute the finding that the contributors intended that their tallied contributions be earmarked, nor does it properly "correct" such an intention. An example of the form letter reads, in pertinent part:

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On the check you designate the contribution to Dianne Feinstein. We assume that you intend the "tallying" or crediting of the contribution to Dianne Feinstein, which will be taken into account by DSCC in allocating funds in support of [her] re-election. . . .

[T]he DSCC does not treat a contribution such as yours as "earmarked" and does not accept earmarked contributions.

If you have a different expectation about the uses of this contribution, we will promptly refund it to you at your request. Please advise if this is the case.

Response of DSCC, Exhibit A.

First, this letter puts the onus on the contributor by requiring that the contributor take the affirmative step of contacting the DSCC if he or she has "a different expectation" about the uses of the contribution. It can be expected that many contributors would simply not bother to exert the effort to obtain a refund. Moreover, this letter is less than clear; it recognizes the previous designation and, to the extent it contradicts the candidate's solicitation, it does so only if the reader understands the DSCC's proposed distinction between "earmarking" and "designation." Despite the DSCC's proffer that its policy is to refuse earmarked contributions, at this stage of the proceedings, it still appears that sending a contribution that is "tallied" for a specific candidate to the DSCC constitutes earmarking.

Based on the available record, it appears that contributors who responded to the Sanford campaign's solicitation and made tallied contributions to the DSCC on behalf of the Sanford campaign made earmarked contributions. Assuming that the DSCC "passed through" tallied contributions to the candidate in the

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form of coordinated party expenditures as alleged, there is reason to believe that the Sanford campaign failed to report the earmarked contributions and that the DSCC acted as a conduit for earmarked contributions, as required by 11 C.F.R. § 110.6(c)(2). Moreover, to the extent such contributions came from: (1) a donor whose "tallied" contribution(s) exceeded the statutory maximum for an individual's contributions to a candidate committee or (2) a donor who had already made the maximum contribution to the Sanford campaign, it appears that the Sanford for Senate Committee accepted excessive contributions, in violation of 2 U.S.C. § 441a(f). Therefore, for all of these reasons, there is reason to believe that the Sanford for Senate Committee and Alton G. Buck, as treasurer violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2).

MERGER OF MURS

After finding reason to believe that violations occurred in MUR 3617 and MUR 3658, the Commission voted to merge MUR 3617 and MUR 3658 into MUR 3620 and to hereafter refer to the entire matter as MUR 3620.

950436902/1



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

October 17, 1994

Lyn Utrecht, Esquire  
Manatt, Phelps, Phillips & Kantor  
1200 New Hampshire Ave, N.W.  
Washington, DC 20036-6889

RE: MUR 3620  
Feinstein for Senate  
Committee and Michael J.  
Barrett, as treasurer

Dear Ms. Utrecht:

On September 29, and October 2, 1992, the Federal Election Commission ("Commission") notified your clients, the Feinstein for Senate Committee and Michael J. Barrett, as treasurer, of complaints in MUR 3620 and MUR 3617 alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). In addition, you were notified of the supplements on November 4, 1992, and January 11, 1993. Copies of the complaints and supplements were provided with these notifications.

Upon further review of the allegations contained in the complaints and supplements, and information supplied by you, the Commission, on October 4, 1994, found that there is reason to believe the Feinstein for Senate Committee and Michael J. Barrett, as treasurer, violated 2 U.S.C. § 441a(f) of the Act and 11 C.F.R. § 110.6(c)(2) of the Commission's regulations. On October 4, 1994, the Commission also determined to merge MUR 3617 into MUR 3620, and hereafter refer to this matter as MUR 3620. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the Order and Subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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Ms. Utrecht  
Page 2

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 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 investigation to be made public. If you have any questions, please contact Mary Ann Bumgarner, the attorney assigned to this matter, at (202) 219-3400.

For the Commission,

  
Trevor Potter  
Chairman

Enclosures  
Order and Subpoena  
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

)  
)  
) MUR 3620  
)

SUBPOENA TO PRODUCE DOCUMENTS  
ORDER TO SUBMIT WRITTEN ANSWERS

TO: The Feinstein for Senate Committee  
and Michael J. Barrett, as treasurer  
c/o Lyn Utrecht  
Manatt, Phelps, Phillips & Kantor  
1200 New Hampshire Avenue, N.W.  
Washington, D.C. 20036-6889

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in  
furtherance of its investigation in the above-captioned matter,  
the Federal Election Commission hereby orders you to submit  
written answers to the questions attached to this Order and  
subpoenas you to produce the documents requested in the attachment  
to this Subpoena. Legible copies which, where applicable, show  
both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and forwarded to  
the Office of the General Counsel, Federal Election Commission,  
999 E Street, N.W., Washington, D.C. 20463, along with the

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The Feinstein for Senate Committee and  
Michael J. Barrett, as treasurer  
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requested documents within 30 days of receipt of this Order and  
Subpoena.

WHEREFORE, the Chairman of the Federal Election Commission  
has hereunto set his hand in Washington, D.C. on this 14<sup>th</sup> day of  
October, 1994.

For the Commission,



Trevor Potter  
Chairman

ATTEST:

  
Marjorie W. Emmons  
Secretary to the Commission

Attachment  
Questions and Document Requests

95043690275

INSTRUCTIONS

Each answer shall be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

Each answer shall be preceded by the question or interrogatory to which the answer pertains.

Please organize all documents and label each group of documents to correspond with the specific Request for Production to which each document or group of documents pertains.

In answering these interrogatories and requests for production of documents, furnish all documents and all information, however obtained, that is in your possession, or known by or otherwise available to you, or in the possession of or known by or otherwise available to your attorneys, agents, employees, or other representatives of you and/or your attorneys.

The response to each interrogatory shall set forth separately the identification of each person capable of furnishing testimony concerning the response given. In addition, the response shall identify every individual who provided information, documentation, or other input relating to the response, and those who assisted in drafting the interrogatory response.

Unless otherwise indicated, each discovery request shall refer to the time period covering the 1992 general election campaign.

If you cannot answer any of the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder. In addition, state what information or knowledge you have concerning the unanswered portion and describe the specific efforts made by you or anyone on your behalf to ascertain the information. Also, state as definitively as possible when you anticipate obtaining the information and supplementing your response.

If you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient

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Page 4

detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

The following interrogatories and requests for production of documents are continuing in nature, requiring you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information subsequent to your original answers. Include in any supplemental answers the date and manner in which such further or different information came to your attention.

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DEFINITIONS

For purposes of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" or "your" shall mean the named respondents in this action to whom these discovery requests are addressed, including all persons who act in any capacity for the respondents or in any relationship to the respondents, including officers, employees, agents or attorneys and/or others who act on the respondents' behalf.

The "DSCC" shall mean the Democratic Senatorial Campaign Committee, including all persons who act in any capacity for the DSCC or in any relationship to the DSCC, including officers, employees, agents or attorneys and/or others who act on behalf of the DSCC.

The "Feinstein campaign" shall mean the candidate and the Feinstein for Senate Committee, Dianne Feinstein's authorized campaign committee, including all persons who act in any capacity for the Feinstein campaign or in any relationship to the Feinstein campaign including officers, employees, agents or attorneys and/or others who act on behalf of the Feinstein campaign.

"Coordinated party expenditures" shall refer to those expenditures made by the DSCC in connection with the 1992 general election campaign of Democratic candidates for election to the office of U.S. Senator pursuant to 2 U.S.C. § 441a(d)(3)(A).

The "tally sheet" or "tally sheet program" or "tally program" shall refer to the "DSCC Tally Sheet" described in the Feinstein for Senate Committee's Response dated November 10, 1992.

A "tallied contribution" shall refer to a contribution to the DSCC that the contributor has indicated is to be tallied for a particular candidate's tally sheet.

"Democratic Senate candidate" shall refer to any Democratic candidate who ran for election to the office of U.S. Senator during the 1992 general election campaign including all persons who act in any capacity for the Democratic Senate candidate or in any relationship to the Democratic Senate candidate, including officers, employees, agents or attorneys and/or others who act on behalf of the Democratic Senate candidate and/or his or her campaign.

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"Candidate committee" or "candidate's committee" shall refer to the authorized campaign committee of any Democratic candidate who ran for election to the office of Senator during the 1992 general election campaign including all persons who act in any capacity for the candidate committee or in any relationship to the candidate committee, including officers, employees, agents or attorneys and/or others who act on behalf of the candidate committee.

"Person" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Identify" with respect to a person shall mean to state the full name, the most recent business and residence addresses, the most recent business and home telephone numbers, the person's position and job description at the time in question with respect to the interrogatory, the present occupation or position of such person, and the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean to state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, and the number of pages comprising the document.

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The Feinstein for Senate Committee and  
Michael J. Barrett, as treasurer

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"And" as well as "or" shall be construed either disjunctively or conjunctively, as necessary to bring within the scope of these interrogatories and requests for the production of documents any information and documents which may otherwise be construed to be outside their scope.

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BEFORE THE FEDERAL ELECTION COMMISSION  
INTERROGATORIES AND REQUESTS FOR DOCUMENTS

MUR 3620  
The Feinstein for Senate Committee and  
Michael J. Barrett, as treasurer

1. Please describe in full and complete detail when and how the DSCC informed the Feinstein campaign of the DSCC's tally sheet program.

2. Please describe when and how the DSCC recruited or encouraged the Feinstein campaign to participate in the tally sheet program (e.g., telephone calls, written solicitations, etc.).

3. Please state whether the DSCC offered, explicitly or impliedly, any incentive for participating in the tally sheet program to the Feinstein campaign.

4. If the answer to interrogatory number 3 is in the affirmative:

- a. Please describe in full and complete detail each such incentive;
- b. Please identify each and every person to whom the incentive(s) was offered or communicated;
- c. Please describe how and when the DSCC communicated the incentive(s) to each of the persons identified in response to interrogatory number 4(b).

5. With regard to the August 9, 1992 solicitation signed by Dianne Feinstein attached as Exhibit 4 to the complaint in MUR 3620 (the "August 9 solicitation"), please provide the following information:

- a. Please identify all persons who were involved and/or who had responsibility, including supervisory responsibility, for writing, producing and/or distributing the August 9 solicitation and please specify each person's role.

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- b. Please state the total number of August 9 solicitations mailed or otherwise distributed; what was the source of the distribution list?
- c. Of those solicited, how many persons had given the maximum limit to the Feinstein campaign?
- d. Please describe in full and complete detail how the Feinstein campaign determined to whom the August 9 solicitation would be mailed or otherwise distributed. Was a person's status as a "maxed out" contributor to the Feinstein campaign a factor in being included on the distribution list?
- e. Please state whether the Feinstein campaign produced and distributed more than one version of the August 9 solicitation. If so, identify and produce a copy of each.
- f. Identify and produce a copy of all documents that accompanied the August 9 solicitation.
- g. Please identify each person who attended the evening with Senator Bentsen on August 27, as described in the August 9 solicitation.
- h. Please state the total number of tallied contributions made in response to the August 9 solicitation and/or in conjunction with the August 27 fundraiser, the amount of each such tallied contribution and the identity of each contributor who made a tallied contribution.
- i. Please state the total number of non-tallied contributions made in response to the August 9 solicitation and/or in conjunction with the August 27 fundraiser, the amount of each such non-tallied contribution and the identity of each contributor who made a non-tallied contribution.

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6. With regard to the September 14, 1992 solicitation from the Feinstein for Senate Committee attached as Exhibit 1 to the supplement to the complaint in MUR 3617 (the "September 14 solicitation"), please provide the following information:

- a. Please identify all persons who were involved and/or who had responsibility, including supervisory responsibility, for writing, producing and/or distributing the September 14 solicitation and please specify each person's role.
- b. Please state the total number of September 14 solicitations mailed or otherwise distributed; what was the source of the distribution list?
- c. Of those solicited, how many persons had given the maximum limit to the Feinstein campaign?
- d. Please describe in full and complete detail how the Feinstein campaign determined to whom the September 14 solicitation would be mailed or otherwise distributed. Was a person's status as a "maxed out" contributor to the Feinstein campaign a factor in being included on the distribution list?
- e. Please state whether the Feinstein campaign produced and distributed more than one version of the September 14 solicitation. If so, identify and produce a copy of each.
- f. Identify and produce a copy of all documents that accompanied the September 14 solicitation.
- g. Please identify each person who attended the October 12, 1992 fundraising reception, as described in the September 14 solicitation.
- h. Please state the total number of tallied contributions made in response to the September 14 solicitation and/or in conjunction with the October 12, 1992 fundraising reception, the amount of each such tallied contribution and the identity of each contributor who made a tallied contribution.

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- i. Please state the total number of non-tallied contributions made in response to the September 14 solicitation and/or in conjunction with the October 12, 1992 fundraising reception, the amount of each such non-tallied contribution and the identity of each contributor who made a non-tallied contribution.

7. Did the DSCC draft, prepare, supply, or otherwise participate in the production of any solicitation issued by the Feinstein campaign that referred to the tally program?

8. If the answer to interrogatory number 7 is in the affirmative:

- a. Please identify and produce a copy of each such solicitation and/or draft solicitation provided by the DSCC;
- b. For each such solicitation, identify each and every person who was involved in drafting or preparing the solicitation and describe the nature of each person's involvement.

9. Please state whether the Feinstein campaign sent different solicitations to contributors who had contributed the statutory maximum to the Feinstein campaign and to contributors who had not. If so, please describe in full and complete detail how or in what ways they differed.

10. If the answer to interrogatory number 9 is in the affirmative, please identify and produce a copy of each solicitation sent to those contributors who had contributed the statutory maximum to the Feinstein campaign.

11. Please state the date and amount of contributions to the DSCC that were tallied for the Feinstein campaign.

12. Please describe, in full and complete detail, how the Feinstein campaign recorded, memorialized, or otherwise kept records of the amount of contributions to the DSCC that were tallied for the Feinstein campaign and please provide a copy of all such documents memorializing or recording the amount of tallied contributions.

13. Please describe, in full and complete detail, how the DSCC advised the Feinstein campaign of the amount of contributions to the DSCC that were tallied for the Feinstein campaign.

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The Feinstein for Senate Committee and  
Michael J. Barrett, as treasurer

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14. Please describe, in full and complete detail, what the Feinstein campaign communicated to potential contributors about the DSCC's "tally sheet program" or the option of "tallying" a contribution to the DSCC for the Feinstein campaign, and the method(s) by which that information was communicated.

15. Please state whether you contend that tallied contributions are not earmarked contributions, as defined and regulated by 2 U.S.C. § 441a(a)(8) and the governing regulations. If you so contend:

- a. Please state and describe in full and complete detail each and every fact which supports this contention.
- b. Please identify and produce each and every document which you contend supports this contention.

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REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Please provide a copy of each and every version of every solicitation, mailing, or other document that the Feinstein campaign sent to potential contributors in connection with the 1992 general election campaign that refers to the tally program or that discusses or describes the option of tallying a contribution for the Feinstein campaign's tally account.

2. Please provide a copy of each and every memorandum, letter, or other document that the DSCC sent to the Feinstein campaign explaining and/or concerning the tally sheet program.

3. Please provide a copy of all documents pertaining to the tally sheet program, including, but not limited to:

- a. any and all agreements between the DSCC and the Feinstein campaign;
- b. correspondence between the DSCC and the Feinstein campaign;
- c. documents from the DSCC advising the Feinstein campaign of the amount of contributions to the DSCC tallied for the Feinstein campaign;
- d. telephone memoranda and/or other written memoranda pertaining to the tally program and/or its implementation;
- e. letters or sample letters soliciting tallied contributions;
- f. other documents or sample documents soliciting tallied contributions;
- g. telephone scripts for calls to contributors; and
- h. thank-you letters or sample thank-you letters sent to contributors.

4. Please provide a copy of each and every document the DSCC sent to the Feinstein campaign relating to the amount of coordinated party expenditures the DSCC had spent or had determined to spend on behalf of the Feinstein campaign.

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MUR 3620

The Feinstein for Senate Committee and  
Michael J. Barrett, as treasurer

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5. Please provide a copy of all documents prepared by the Feinstein campaign relating to or discussing the amount of coordinated party expenditures to be spent by the DSCC on behalf of the Feinstein campaign.

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**MUR: 3620**

**RESPONDENTS:** The Feinstein for Senate Committee  
and Michael J. Barrett, as treasurer

**I. GENERATION OF MATTER**

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This matter arises from two complaints filed with the Federal Election Commission ("Commission") against the Feinstein for Senate Committee (the "Feinstein campaign") during the 1992 election cycle. At issue is whether certain contributions made to the Democratic Senatorial Campaign Committee ("DSCC") were earmarked for the Feinstein campaign. The first complaint, MUR 3617, was submitted by the Seymour for Senate Committee and the second complaint, MUR 3620, was filed by the National Republican Senatorial Committee ("NRSC").

The complaints challenge the DSCC's "tally system," an accounting method used to keep track of the total funds raised for the DSCC by a particular candidate. They allege that during the 1992 Senate race, the DSCC accepted contributions designated for Dianne Feinstein's tally account, which contributions were allegedly "passed through" to the candidate in the form of coordinated party expenditures. The complainants charge that this practice violates 2 U.S.C. § 441a(a)(8), which mandates that an "earmarked" contribution made through an intermediary be treated as a contribution from the donor to the candidate, and 11 C.F.R. § 110.6(c)(1)(i), which requires that the intermediary of an earmarked contribution disclose the source of the contribution and

the recipient candidate. It is further alleged that by receiving coordinated party expenditures from the DSCC, the Feinstein campaign accepted excessive contributions from: (1) donors whose tallied contribution(s) to the DSCC exceeded the statutory limit for an individual's contributions to a candidate; and (2) donors who had already made the maximum allowable direct contributions to their campaigns (informally referred to by the Respondents as "maxed-out" or "max-out" contributors).

## II. FACTUAL AND LEGAL ANALYSIS

### A. The Act

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The Federal Election Campaign Act of 1971, as amended, ("the Act") establishes dollar limits on contributions to candidates for Federal office. An individual may not contribute to a candidate (and the candidate's authorized committees) more than \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). In addition, an individual may contribute up to \$20,000 per calendar year to political committees established and maintained by a national political party that are not the authorized political committees of any candidate. 2 U.S.C. § 441a(a)(1)(B). The Act further provides that a candidate may not knowingly accept, and a political committee may not knowingly make, a contribution or expenditure in violation of the provisions of the Act. 2 U.S.C. § 441a(f).

A contribution made by a person, either directly or indirectly, on behalf of a particular candidate, which is in any way earmarked or otherwise directed through an intermediary or conduit, shall be treated as a contribution from such person to the candidate. 2 U.S.C. § 441a(a)(8). "Earmarked" means "a

designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee." 11 C.F.R. § 110.6(b)(1).

A "conduit" or "intermediary" means any person who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee (with certain exceptions not applicable here). 11 C.F.R. § 110.6(b)(2). In addition, 11 C.F.R. § 110.6(b)(2)(iii) provides that any person who receives an earmarked contribution shall, among other requirements, forward such earmarked contribution to the candidate or authorized committee in accordance with 11 C.F.R. § 102.8. Section 102.8 provides, inter alia, that earmarked contributions must be forwarded no later than 10 days after receipt.

Furthermore, the intermediary or conduit of an earmarked contribution must report the source of the contribution and the intended recipient to the Federal Election Commission and to the intended recipient. 2 U.S.C. § 441a(a)(8). See also 11 C.F.R. § 110.6(c)(1). Similarly, the recipient candidate committee must report earmarked contributions and each conduit or intermediary who forwards one or more earmarked contributions which in the aggregate exceed \$200 in any calendar year in accordance with 11 C.F.R. § 110.6(c)(2).

In addition, the Act authorizes the national and state committees of a political party to make additional expenditures in support of that party's candidates for federal office:

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Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, . . . may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2) and (3) of this subsection.

2 U.S.C. § 441a(d)(1).

Paragraph (2) of this subsection applies to Presidential candidates and is not relevant here. Paragraph (3), which concerns candidates for Senate, provides that the national and State committees of a political party may each make expenditures which do not exceed the greater of \$20,000 or two cents multiplied by the voting age population of the State. See 2 U.S.C. § 441a(d)(3)(A) and 11 C.F.R. §§ 110.7(b)(1) and (b)(2)(i). These expenditures are generally referred to as "441a(d) expenditures" or "coordinated party expenditures." If a state party committee chooses not to make the expenditures permitted by section 441a(d), it may designate an agent, such as a national committee of the party, to make coordinated party expenditures on its behalf. FEC v. Democratic Senatorial Campaign Comm., 454 U.S. 27 (1981). The national committees are not capable of making independent expenditures in connection with the general election campaign of a candidate for Federal office. 11 C.F.R. § 110.7(b)(4).

**B. The Facts**

**1. MUR 3620**

MUR 3620 stems from the National Republican Senatorial Committee's complaint charging the DSCC with failing to properly report earmarked contributions and charging the Feinstein campaign

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with accepting excessive contributions from donors who had already made the maximum contribution to the Feinstein campaign. The complainant submitted several exhibits in support of its allegations against the Feinstein campaign.

The first three exhibits are solicitations and memoranda from the DSCC. Exhibit one is an invitation from the DSCC to contributors for an event entitled "U.S. Senate Campaign Countdown," which is described as a:

special conference designed to provide strategic information on the 1992 U.S. Senate campaigns followed by a special program of cocktails, dinner and breakfast at the private homes of Senators Kennedy, Robb and Rockefeller.

The invitation goes on to discuss the DSCC's tally system:

The Campaign Countdown is designed for a Senate campaign's max-out donors and top contributors who are interested in further supporting their candidates through the DSCC's tally system. The DSCC provides donors with the opportunity to tally their contributions to the Democratic Senate nominees of their choice. The program is designed for donors who would like to tally \$10,000 or more in new money to their preferred Senate candidate(s) and who would like to join one of the DSCC's elite donor programs.

Complaint, Exhibit 1.

The second exhibit is a memorandum from the DSCC explaining the function of the Democratic Senatorial Campaign Committee in general, and the tally option specifically. It reads, in relevant portion:

**The Democratic Senatorial Campaign Committee**

**THE TALLY OPTION**

**WHAT ROLE DOES THE DSCC PLAY?**

**Funding Democratic Senate Nominees**

The primary function of the Democratic Senatorial Campaign Committee is to provide funding for Democratic Senate candidates in their quest for the U.S. Senate.

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The Finance Staff of the DSCC raises funds which are allocated to targeted Democratic Senate races based on the campaign's need and winability [sic]. These funds provide nominees with an invaluable source of additional funding which helps them keep their competitive edge . . . .

**WHY GIVE TO THE DSCC?**

Under FEC regulations, an individual may contribute a maximum of \$2000 to a Senate candidate. (\$1000 in the primary and another \$1000 to a general campaign fund). However, an individual may contribute up to \$20,000 annually to a political party organization like the DSCC. PAC's may contribute a maximum of \$15,000 annually to the DSCC. The Committee in turn allocates those funds to Democratic Senate candidates who are up for election in the current cycle. An individual (or PAC) is able to make the maximum legal contribution to assist Democratic Senate candidates financially by contributing to the DSCC.

**WHAT DOES "TALLY" MEAN?**

When contributing to the DSCC, a donor may request that his or her contribution be "tallied" to the Democratic Senate candidate(s) of their choice. This is a way for a donor to indicate their candidate preference(s) and how they would like their DSCC contribution distributed. Financial support to Senate candidates is determined by the Senators who comprise the allocation Committee of the DSCC. A candidate's "tallied" contributions are a key criterion considered in the Committee's allocation decisions.

\* \* \*

Complaint, Exhibit 2.

The third exhibit to the complaint is a memorandum from the DSCC to "Senate AA's & Campaign Finance Directors" concerning the "Campaign Countdown" program. The relevant portions read:

Please join the DSCC for a special program that will be of great benefit to your Senate campaign.

The program is designed for high dollar and max-out contributors to 1992 Senate campaigns.

On Wednesday afternoon September 9, the DSCC will host a campaign conference covering the latest information on the 1992 Senate races . . . .

That evening, donors and contributors will be invited to

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a special evening of cocktails at the McLean home of Senator & Mrs. Ted Kennedy (6:30 - 8:00 pm) followed by dinner at the home of Senator & Mrs. Charles S. Robb. The following morning, guests will be invited to breakfast at the home of Senator & Mrs. Jay Rockefeller.

The program is specifically designed to encourage max-out and high-dollar contributors to tally \$10,000 or more (per couple) in new money to their preferred Democratic Senate candidate(s).

This is an ideal opportunity for you to cultivate your high dollar prospects and encourage them to support their candidate(s) through the DSCC's tally system.

\* \* \*

Complaint, Exhibit 3.

Fourth is a copy of an invitation from the Feinstein campaign to meet Feinstein and then-Senator Lloyd Bentsen at a fundraising event in a private Beverly Hills home. It reads, in pertinent part:

[Senator Bentsen] has graciously agreed to help us raise money for my account with the Democratic Senatorial Campaign Committee.

The DSCC is a Washington based group set up by U.S. Senators in the Democratic Party to help raise money and support for Democratic U.S. Senate candidates throughout the country. They can accept personal contributions of up to \$20,000 in a calendar year (and within an individual's \$25,000 yearly federal contribution limit). Your contribution to the DSCC can be credited to the Dianne Feinstein account.

I hope you will consider a contribution of at least \$1,000 per person to the DSCC. John Seymour will receive the maximum of \$2.5 million from the Republican Senatorial Campaign Committee. I am hopeful that this evening will be a major fundraising event.

For those of you who have already maxed out to my campaign, the DSCC tally is an avenue through which you can offer more support. For further information

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regarding your donation to my DSCC account or my campaign, please call Tricia Riffenburgh at [phone number].

I look forward to seeing you on the 27th.

Warmest regards,

(signed)  
Dianne Feinstein

Complaint, Exhibit 4.

Based on these documents, the complaint alleges that the DSCC and the Feinstein campaign evaded the statutory limits on campaign contributions by urging Feinstein's "maxed-out" contributors to make tallied contributions to the DSCC, which were allegedly passed through to the candidate in the form of coordinated party expenditures.

2. MUR 3617

The complaint in MUR 3617, which names only the Feinstein for Senate Committee as a Respondent, alleges that the Feinstein campaign accepted excessive contributions from: (1) its "maxed-out" donors who had also made a contribution the DSCC designated for Feinstein's "tally account"; and (2) donors who had not "maxed-out," but whose tallied contributions exceeded the annual limit on contributions from individuals to the Feinstein campaign. In support, the complainant submitted the same invitation to the evening with Senator Bentsen which was submitted with MUR 3620, Exhibit 4, discussed above. The complainant later supplemented the complaint by submitting another solicitation from the Feinstein campaign's "host committee." It reads, in relevant portion:

We are supporting Dianne Feinstein in her bid for

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the United States Senate. As members of the Bay Area Jewish community, we believe that Dianne Feinstein will serve as an articulate and forceful advocate for a strong United States/Israeli relationship.

\* \* \*

To win the election, Dianne needs our financial assistance.

Please consider joining us on the host committee for a fundraising reception to be held in Dianne's honor . . . .

You may wish to participate as a Benefactor, Patron or Sponsor by contributing or raising \$5,000, \$2,500 or \$1,000 respectively.

As an individual, you can contribute up to \$1,000 directly to the "Feinstein for Senate" Committee. Contributions in excess of \$1,000 must be made payable to the "Democratic Senatorial Campaign Committee" (DSCC) and marked "Feinstein Tally." The DSCC is the mechanism for U.S. Senate Candidates to receive their allocation from the Democratic party and Dianne is eligible to receive \$2.5 million from this committee. Our hope is that thought [sic] this event, we will take advantage of this opportunity to raise significant funds.

\* \* \*

Sincerely,

(signed)  
Henry Berman  
Chair, Host Committee

Enclosed with the invitation is a response card which reads:

Please reserve a space in my name . . . as a:

**BENEFACTOR:**

Enclosed is my check for \$5,000 (payable to the "Democratic Senatorial Campaign Committee" marked for Dianne's tally)

**PATRON:**

Enclosed is my check for \$2,500 (payable to the "Democratic Senatorial Campaign Committee" marked for Dianne's tally)

**SPONSOR:**

Enclosed is my check for \$1,000 (payable to "Feinstein for Senate")

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Supplement to Complaint dated September 23, 1992, Exhibit 1.

Based on the language in these two solicitations, the complaint alleges that contributions made to the DSCC for the "Feinstein tally" were earmarked for Feinstein and should have been treated as contributions from the donor to the candidate, as required by 2 U.S.C. § 441a(a)(8). For that reason, the complaint alleges that the Feinstein campaign solicited and accepted excessive contributions in circumvention of the law establishing limits on individual contributions to the candidate's campaign.

C. The Responses

1. The DSCC

In its response, the DSCC explains that the "Tally Sheet" is an accounting process established to allow the DSCC to keep track of the amount of money raised for the DSCC by a particular candidate. Response of DSCC at 1. That total is then taken into consideration as one of several factors used when the DSCC makes funding decisions for the coordinated party expenditures authorized by 2 U.S.C. § 441a(d). Id. According to the DSCC, tallied contributions are not segregated from other funds. All tallied contributions (and all other contributions) are deposited into the DSCC's general bank accounts and used entirely at the DSCC's discretion. Id. at 2. Furthermore, the DSCC states that money tallied for a specific candidate is neither "passed through" to the candidate, nor spent on a dollar-for-dollar exchange for the amount raised by a candidate. Id. On the contrary, it submits that its express policy is to refuse earmarked donations.

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When it receives a donation that appears to be earmarked, the DSCC sends a form letter intended to clarify the contributor's intent. In support, the DSCC attached two sample form letters. Apart from the fact that the form letters refer to different candidates, the text in the letters is identical. One reads, in part:

Thank you for your contribution to the Democratic Senatorial Campaign Committee. . . .

On the check you designate the contribution to Dianne Feinstein. We assume that you intend the "tallying" or crediting of the contribution to Dianne Feinstein, which will be taken into account by DSCC in allocating funds in support of his [sic] re-election. Contributions "tallied" to a Senator are a significant factor in the Committee's allocation decisions.

We note that the amount to be allocated is decided by the DSCC within its discretion. For this reason the DSCC does not treat a contribution such as yours as "earmarked" and does not accept earmarked contributions.

If you have a different expectation about the uses of this contribution, we will promptly refund it to you at your request. Please advise if this is the case.

If you have any questions, please do not hesitate to contact me . . . .

Sincere thanks,

(signed)  
Grace M. Coyle  
Finance Assistant

Id., Exhibit A.

According to the DSCC, tallied funds deposited into DSCC accounts are used for any of the DSCC's most pressing expenses, such as administrative expenses or 441a(d) expenditures on behalf of another candidate. Id. at 2. The DSCC proffers that there have been candidates who raised large amounts of money for the DSCC, but received little or no 441a(d) funding in return (such as

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a barely challenged incumbent Senator). Id. In other cases, some candidates who raised little or no money for the DSCC received full funding under the limits established for coordinated party expenditures. Id.

The DSCC further proffers that it considers a variety of factors in determining which candidates will receive 441a(d) funding. It looks at:

- Whether the race is winnable;
- Whether the candidate has a serious challenger;
- Whether the candidate has been successful in raising funds for his or her own campaign;
- Whether the candidate has assisted the DSCC in its fundraising efforts;
- Whether the DSCC has more pressing expenditures that must be made. Id. at 2-3. According to the DSCC, these criteria have been repeatedly emphasized to contributors and candidates. Id. at 3. It contends that, "the significance of the tally, in short, is its role as an incentive to its candidates to support its fundraising efforts." Id.

Next, the DSCC argues that to view the tally system as earmarking would significantly weaken the national party's role as a source of funding for its candidates. It emphasizes the special spending authority, far in excess of the limits applicable to contributions, conferred on national party committees by section 441a(d). In 1992 in California, for example, the coordinated expenditure limits for National and State party committees for

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Senate candidates were approximately \$1.2 million each.<sup>1</sup> Id. The DSCC argues that it cannot reasonably be expected to raise millions of dollars without the assistance of the Senate candidates it is authorized to fund. Id.

In addition, the DSCC contends that the National Republican Senatorial Committee engages in the same or similar type of fundraising practice as challenged in the complaints. As evidence, it submits a solicitation dated October 9, 1992, from Republican Senate candidate Paul Coverdell. The solicitation reads, in part:

I tried to contact you by phone to update you on our campaign to unseat Democrat Senator Wyche Fowler of Georgia.

A recent poll by the Senatorial Committee indicates that Fowler is extremely vulnerable in this anti-incumbent election year. . . .

\* \* \*

This has led to the Senatorial Committee fully funding the race and putting over \$500,000 into the campaign for television. We are trying to double our budget for television and you can make a difference. Please give me a call at [phone number].

If you can allocate any amount of your Senatorial Trust funds to our campaign, or have some other means of

1. FEC Record, Volume 18, Number 3 (March, 1992) at 4.

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contributing, it could be the difference in our efforts to retire one of the Senate's most liberal members.

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\_\_\_\_\_ I want to allocate \_\_\_\_\_ through the Senatorial Trust towards Paul's campaign.

\_\_\_\_\_ I want to pledge a contribution of \_\_\_\_\_.

\_\_\_\_\_ I would like to speak to Paul about his campaign. Please call my office to schedule a phone conversation.

Id., Exhibit B. There is nothing in the record which explains the specific nature of the "Senatorial Trust."

Finally, the DSCC cites MUR 377, in which it was alleged that a state party committee accepted earmarked contributions when it sponsored a fundraiser for the expressed purpose of assisting a defeated candidate to retire his campaign debt. In that case, the Commission found no probable cause to believe that the state party committee or the candidate's committee committed the alleged violations, and it directed this Office to draft appropriate regulations governing the applicability of the earmarking statute to section 441a(d) expenditures. It appears, however, that a rulemaking proceeding was never completed. In the instant cases, the DSCC urges that if the Commission wishes to address this question, a rulemaking -- not an enforcement action -- is the appropriate forum. Id. at 4.<sup>2</sup>

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2. Of significance here, in two cases after MUR 377, the Commission found that contributions made to a state party committee and subsequently expended by the party committee on the designated candidate were earmarked. See MUR 752 (1978) (contributions found to be earmarked when the date and amount of a contribution by a non-profit corporation whose avowed purpose was to raise funds for a particular Senate candidate coincided almost exactly with the date and amount of the

b. The Feinstein Campaign

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In its response, the Feinstein campaign makes many of the same points set forth by the DSCC. It, too, maintains that tallied contributions are "not restricted or directed for use on behalf of any particular candidate." Response of the Feinstein for Senate Committee and Michael J. Barrett, Treasurer at 3. It points out that there is nothing in the record which suggests that tallied contributions were either designated for expenditure on the Feinstein campaign or spent on her campaign's behalf. Id. at 3-4. On the contrary, the campaign submits that the DSCC retains absolute discretion to determine how the funds are spent. Id. at 4. It also notes the "unique spending authority" conferred on the national party committees under section 441a(d), and it points out that coordinated party expenditures are not considered contributions to a candidate's campaign. Id. Furthermore, it argues, there is no restriction in the Act limiting the candidate's ability to raise funds for party activities. Id. In conclusion, the Feinstein campaign proffers that no earmarked contributions were "solicited, received or passed on to the Feinstein Committee by the DSCC . . . . The [Feinstein] Committee

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(Footnote 2 continued from previous page)  
coordinated party expenditures made by the State committee on behalf of that candidate); and MUR 2632 (1990) (\$2,500 contribution to a state party committee found to be earmarked when the cover letter enclosing the check stated that the contribution was to "help in the election of John Evans to the United States Senate" and when upon receipt of the contribution, the state party committee expended more than \$12,000 on behalf of candidate John Evans for an "election day mailgram," and made other expenditures which appeared to relate to get-out-the vote activities on behalf of Evans).



received no commitment from the DSCC that any funds raised by the Committee for the DSCC would be spent on behalf of the Committee." Id. at 5.

D. Discussion

The information disseminated by the DSCC and the plain language of the Feinstein campaign's solicitations support the conclusion that the Feinstein campaign's requests for "tallied" contributions were, in fact, solicitations for earmarked contributions. Correspondingly, the facts also support the conclusion that contributors who responded to the solicitations intended that their tallied contributions be earmarked for the Feinstein campaign. Therefore, the contributions should have been treated as earmarked, viz. forwarded to the recipient candidate committee within 10 days, reported as earmarked by the conduit and the recipient, and applied to each contributor's per-candidate limit.<sup>3</sup> To illustrate, in the invitation to meet Senator Bentsen, the Feinstein campaign states,

For those of you who have already maxed out to my campaign, the DSCC tally is an avenue through which you can offer more support.

Complaint, MUR 3620, Exhibit 4. The Feinstein campaign's other solicitation states that,

As an individual, you can contribute up to \$1,000 directly to the 'Feinstein for Senate' Committee. Contributions in excess of \$1,000 must be made payable to the 'Democratic Senatorial Campaign Committee' and marked 'Feinstein Tally.' The DSCC is the mechanism for U.S. Senate Candidates to receive their allocation from

3. See 2 U.S.C. § 441a(a)(8); and 11 C.F.R. §§ 110.6(b)(2)(iii), 102.8, and 110.6(c)(2).

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the Democratic party and Dianne is eligible to receive \$2.5 million from this committee.

Supplement to Complaint, MUR 3617, Exhibit A (emphasis added).

The phrasing of these solicitations can be fairly read to state that contributions to the DSCC may be designated for the Feinstein campaign. The first states that the DSCC tally is an avenue through which maxed-out donors can "offer more support," strongly implying that the "support" will be given to the Feinstein campaign. Even more telling is the statement in the second solicitation that, "Contributions in excess of \$1,000 must be made payable to the Democratic Senatorial Campaign Committee." It appears that a contributor would reasonably interpret this to mean that if he or she wishes to contribute more than \$1,000 to the Feinstein campaign, the donor need only make the check payable to the DSCC and designate the Feinstein tally.

There is nothing in the record which establishes whether an explanation of the tally system was provided with the solicitations in question. Even if one was, the explanation may not have negated the suggestion of earmarking. Specifically, the DSCC's memorandum explaining the tally system states that:

This is a way for a donor to indicate their candidate preference(s) and how they [sic] would like their DSCC contribution distributed. Financial support to Senate candidates is determined by the Senators who comprise the allocation Committee of the DSCC. A candidate's "tallied" contributions are a key criterion considered in the Committee's allocation decisions.

Complaint, MUR 3620, Exhibit 2 (emphasis added).

While this paragraph explains that tallied contributions are one key criterion on which the DSCC's allocation decisions are

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based, it also states that the tally system is a method through which donors can indicate how "they would like their DSCC contribution distributed." This at least gives the impression that donors can designate the ultimate recipient of a contribution.

The DSCC's invitation to the Campaign Countdown is even more explicit:

The Campaign Countdown is designed for a Senate campaign's max-out donors and top contributors who are interested in further supporting their candidates through the DSCC's tally system. . . . The program is designed for donors who would like to tally \$10,000 or more in new money to their preferred Senate candidate(s). . . .

Complaint, MUR 3620, Exhibit 1 (emphasis added). Bearing in mind that this invitation was sent to contributors, it appears that the invitees could reasonably conclude that the "new money" referred to would be "new" or additional money to the designated candidate.

In summary, the evidence shows that the DSCC's tally system targeted a candidate's "maxed-out" contributors. Furthermore, the documents in these cases at least suggest that a tallied contribution will be used to help the designated candidate. Based on the totality of these circumstances, it appears that contributors who made tallied contributions to the DSCC in response to the solicitations from the Feinstein campaign could reasonably intend and expect that a tallied contribution would be used to support that candidate. Therefore, it appears that donors who made a contribution to the DSCC designated for the Feinstein campaign's "tally account" intended at least an "implied encumbrance" within the meaning of the earmarking regulation,

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11 C.F.R. § 110.6(b)(1). Correspondingly, it appears that the DSCC was the intended intermediary or conduit of the earmarked contributions within the meaning of 11 C.F.R. § 110.6(b)(2).

Furthermore, the DSCC's letter to contributors purportedly refusing earmarked donations does not refute the finding that the contributors intended that tallied contributions be earmarked, nor does it properly "correct" such an intention. An example of the form letter reads, in pertinent part:

On the check you designate the contribution to Dianne Feinstein. We assume that you intend the "tallying" or crediting of the contribution to Dianne Feinstein, which will be taken into account by DSCC in allocating funds in support of [her] re-election. . . .

[T]he DSCC does not treat a contribution such as yours as "earmarked" and does not accept earmarked contributions.

If you have a different expectation about the uses of this contribution, we will promptly refund it to you at your request. Please advise if this is the case.

Response of DSCC, Exhibit A.

First, this letter puts the onus on the contributor by requiring that the contributor take the affirmative step of contacting the DSCC if he or she has "a different expectation" about the uses of the contribution. It can be expected that many contributors would simply not bother to exert the effort to obtain a refund. Moreover, this letter is less than clear; it recognizes the previous designation and, to the extent it contradicts the candidate's solicitation, it does so only if the reader understands the DSCC's proposed distinction between "earmarking" and "designation." Despite the DSCC's proffer that its policy is to refuse earmarked contributions, at this stage of the

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proceedings, it still appears that sending a contribution that is "tallied" for a specific candidate to the DSCC constitutes earmarking.

Based on the available record, it appears that contributors who responded to these solicitations and made "tallied" contributions to the DSCC on behalf of the Feinstein campaign made earmarked contributions. Assuming that the DSCC "passed through" tallied contributions to the candidate in the form of coordinated party expenditures, as alleged, there is reason to believe that the Feinstein campaign failed to report the earmarked contributions and that the DSCC acted as a conduit for earmarked contributions, as required by 11 C.F.R. § 110.6(c)(2). Moreover, to the extent such contributions came from: (1) a donor whose "tallied" contribution(s) exceeded the statutory maximum for an individual's contributions to a candidate; or (2) a donor who had already made the maximum contribution to the Feinstein campaign, it appears that the Feinstein campaign accepted excessive contributions in violation of 2 U.S.C. § 441a(f). Therefore, for all of these reasons, there is reason to believe that the Feinstein for Senate Committee and Michael J. Barrett, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2).

#### MERGER OF MURS

After finding reason to believe that violations occurred in MUR 3617 and MUR 3658, the Commission voted to merge MUR 3617 and MUR 3658 into MUR 3620 and to hereafter refer to the entire matter as MUR 3620.

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

October 17, 1994

Kenneth A. Gross, Esquire  
Skadden, Arps, Slate, Meagher & Flom  
1440 New York Avenue, N.W.  
Washington, DC 20005

RE: MUR 3620  
Abrams Committee f/k/a  
Abrams '92 Committee and  
Lawrence B. Battenwieser,  
as treasurer

Dear Mr. Gross:

On October 23 and November 4, 1992, the Federal Election Commission ("Commission") notified your clients, the Abrams Committee f/k/a Abrams '92 Committee and Lawrence B. Battenwieser, as treasurer, of a complaint and supplement to the complaint in MUR 3658 alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the complaint and supplement were provided with these notifications.

Upon further review of the allegations contained in the complaint and supplement, and information supplied by you, the Commission, on October 4, 1994, found that there is reason to believe the Abrams Committee f/k/a Abrams '92 Committee and Lawrence B. Battenwieser, as treasurer, violated 2 U.S.C. § 441a(f) of the Act and 11 C.F.R. § 110.6(c)(2) of the Commission's regulations. On October 4, 1994, the Commission also determined to merge MUR 3658 into MUR 3620, and hereafter refer to this matter as MUR 3620. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the Order and Subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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Mr. Gross  
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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 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 investigation to be made public. If you have any questions, please contact Mary Ann Bumgarner, the attorney assigned to this matter, at (202) 219-3400.

For the Commission,

  
Trevor Potter  
Chairman

Enclosures  
Order and Subpoena  
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

)  
)  
) MUR 3620  
)

SUBPOENA TO PRODUCE DOCUMENTS  
ORDER TO SUBMIT WRITTEN ANSWERS

TO: The Abrams Committee, f/k/a  
Abrams '92, and Lawrence B. Battenwieser, as treasurer  
c/o Kenneth A. Gross  
Skadden, Arps, Slate, Meagher & Flom  
1440 New York Avenue, N.W.  
Washington, D.C. 20005

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in  
furtherance of its investigation in the above-captioned matter,  
the Federal Election Commission hereby orders you to submit  
written answers to the questions attached to this Order and  
subpoenas you to produce the documents requested in the attachment  
to this Subpoena. Legible copies which, where applicable, show  
both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and forwarded to  
the Office of the General Counsel, Federal Election Commission,  
999 E Street, N.W., Washington, D.C. 20463, along with the


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The Abrams Committee and Lawrence B.  
Buttenwieser, as treasurer  
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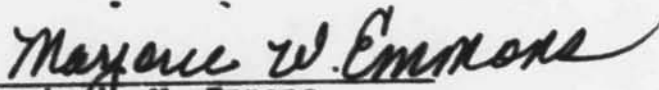
requested documents within 30 days of receipt of this Order and  
Subpoena.

WHEREFORE, the Chairman of the Federal Election Commission  
has hereunto set his hand in Washington, D.C. on this 14<sup>th</sup> day of  
October, 1994.

For the Commission,

  
\_\_\_\_\_  
Trevor Potter  
Chairman

ATTEST:

  
\_\_\_\_\_  
Marjorie W. Emmons  
Secretary to the Commission

Attachment  
Questions and Document Requests

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INSTRUCTIONS

Each answer shall be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

Each answer shall be preceded by the question or interrogatory to which the answer pertains.

Please organize all documents and label each group of documents to correspond with the specific Request for Production to which each document or group of documents pertains.

In answering these interrogatories and requests for production of documents, furnish all documents and all information, however obtained, that is in your possession, or known by or otherwise available to you, or in the possession of or known by or otherwise available to your attorneys, agents, employees, or other representatives of you and/or your attorneys.

The response to each interrogatory shall set forth separately the identification of each person capable of furnishing testimony concerning the response given. In addition, the response shall identify every individual who provided information, documentation, or other input relating to the response, and those who assisted in drafting the interrogatory response.

Unless otherwise indicated, each discovery request shall refer to the time period covering the 1992 general election campaign.

If you cannot answer any of the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder. In addition, state what information or knowledge you have concerning the unanswered portion and describe the specific efforts made by you or anyone on your behalf to ascertain the information. Also, state as definitively as possible when you anticipate obtaining the information and supplementing your response.

If you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient

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The Abrams Committee and Lawrence B.

Buttenwieser, as treasurer

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detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

The following interrogatories and requests for production of documents are continuing in nature, requiring you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information subsequent to your original answers. Include in any supplemental answers the date and manner in which such further or different information came to your attention.

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#### DEFINITIONS

For purposes of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" or "your" shall mean the named respondents in this action to whom these discovery requests are addressed, including all persons who act in any capacity for the respondents or in any relationship to the respondents, including officers, employees, agents or attorneys and/or others who act on the respondents' behalf.

The "DSCC" shall mean the Democratic Senatorial Campaign Committee, including all persons who act in any capacity for the DSCC or in any relationship to the DSCC, including officers, employees, agents or attorneys and/or others who act on behalf of the DSCC.

The "Abrams campaign" shall mean the the candidate and the Abrams Committee, f/k/a Abrams '92, Robert Abrams' authorized campaign committee, including all persons who act in any capacity for the Abrams campaign or in any relationship to the Abrams campaign including officers, employees, agents or attorneys and/or others who act on behalf of the Abrams campaign.

"Coordinated party expenditures" shall refer to those expenditures made by the DSCC in connection with the 1992 general election campaign of Democratic candidates for election to the office of U.S. Senator pursuant to 2 U.S.C. § 441a(d)(3)(A).

The "tally sheet" or "tally sheet program" or "tally program" shall refer to the "tally program" described in the Response of Abrams '92 and its treasurer, dated December 1, 1992.

A "tallied contribution" shall refer to a contribution to the DSCC that the contributor has indicated is to be tallied for a particular candidate's tally sheet.

"Democratic Senate candidate" shall refer to any Democratic candidate who ran for election to the office of U.S. Senator during the 1992 general election campaign including all persons who act in any capacity for the Democratic Senate candidate or in any relationship to the Democratic Senate candidate, including officers, employees, agents or attorneys and/or others who act on behalf of the Democratic Senate candidate and/or his or her campaign.

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"Candidate committee" or "candidate's committee" shall refer to the authorized campaign committee of any Democratic candidate who ran for election to the office of Senator during the 1992 general election campaign including all persons who act in any capacity for the candidate committee or in any relationship to the candidate committee, including officers, employees, agents or attorneys and/or others who act on behalf of the candidate committee.

"Person" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Identify" with respect to a person shall mean to state the full name, the most recent business and residence addresses, the most recent business and home telephone numbers, the person's position and job description at the time in question with respect to the interrogatory, the present occupation or position of such person, and the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean to state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, and the number of pages comprising the document.

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The Abrams Committee and Lawrence B.

Buddenwieser, as treasurer

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"And" as well as "or" shall be construed either disjunctively or conjunctively, as necessary to bring within the scope of these interrogatories and requests for the production of documents any information and documents which may otherwise be construed to be outside their scope.

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BEFORE THE FEDERAL ELECTION COMMISSION  
INTERROGATORIES AND REQUESTS FOR DOCUMENTS

MUR 3620  
The Abrams Committee and  
Lawrence B. Buttenwieser, as treasurer

1. Please describe in full and complete detail when and how the DSCC informed the Abrams campaign of the DSCC's tally sheet program.
2. Please describe when and how the DSCC recruited or encouraged the Abrams campaign to participate in the tally sheet program (e.g., telephone calls, written solicitations, etc.).
3. Please state whether the DSCC offered, explicitly or impliedly, any incentive for participating in the tally sheet program to the Abrams campaign.
4. If the answer to interrogatory number 3 is in the affirmative:
  - a. Please describe in full and complete detail each such incentive;
  - b. Please identify each and every person to whom the incentive(s) was offered or communicated;
  - c. Please describe how and when the DSCC communicated the incentive(s) to each of the persons identified in response to interrogatory number 4(b).
5. Did the DSCC draft, prepare, supply, or otherwise participate in the production of any solicitation issued by the Abrams campaign that referred to the tally program?
6. If the answer to interrogatory number 5 is in the affirmative:
  - a. Please identify and produce a copy of each such solicitation and/or draft solicitation provided by the DSCC;
  - b. For each such solicitation, identify each and every person who was involved in drafting or preparing the solicitation and describe the nature of each person's involvement.

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7. Please state whether the Abrams campaign sent different solicitations to contributors who had contributed the statutory maximum to the Abrams campaign and to contributors who had not. If so, please describe in full and complete detail how or in what ways they differed.

8. If the answer to interrogatory number 7 is in the affirmative, please identify and produce a copy of each solicitation sent to those contributors who had contributed the statutory maximum to the Abrams campaign.

9. Please state the date and amount of contributions to the DSCC that were tallied for the Abrams campaign.

10. Please describe, in full and complete detail, how the Abrams campaign recorded, memorialized, or otherwise kept records of the amount of contributions to the DSCC that were tallied for the Abrams campaign, and please provide a copy of all documents recording or memorializing the amount of tallied contributions.

11. Please describe, in full and complete detail, how the DSCC advised the Abrams campaign of the amount of contributions to the DSCC that were tallied for the Abrams campaign.

12. Please describe, in full and complete detail, what the Abrams campaign communicated to potential contributors about the DSCC's "tally sheet program" or the option of "tallying" a contribution to the DSCC for the Abrams campaign, and the method(s) by which that information was communicated.

13. Please state whether you contend that tallied contributions are not earmarked contributions, as defined and regulated by 2 U.S.C. § 441a(a)(8); and the governing regulations. If you so contend:

- a. Please state and describe in full and complete detail each and every fact which supports this contention.
- b. Please identify and produce each and every document which you contend supports this contention.

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**REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. Please provide a copy of each and every version of every solicitation, mailing, or other document that the Abrams campaign sent to potential contributors in connection with the 1992 general election campaign which refers to the tally program or which discusses or describes the option of tallying a contribution for the Abrams campaign's tally account.

2. Please provide a copy of each and every version of every memorandum, letter, or other document that the DSCC sent to the Abrams campaign explaining and/or concerning the tally sheet program.

3. Please provide a copy of all documents pertaining to the tally sheet program, including, but not limited to:

- a. any and all agreements between the DSCC and the Abrams campaign;
- b. correspondence between the DSCC and the Abrams campaign;
- c. documents from the DSCC advising the Abrams campaign of the amount of contributions to the DSCC tallied for the Abrams campaign;
- d. telephone memoranda and/or other written memoranda pertaining to the tally program and/or its implementation;
- e. letters or sample letters soliciting tallied contributions;
- f. other documents or sample documents soliciting tallied contributions;
- g. telephone scripts for calls to contributors; and
- h. thank-you letters or sample thank-you letters sent to contributors.

4. Please provide a copy of each and every document the DSCC sent to the Abrams campaign relating to the amount of coordinated party expenditures the DSCC had spent or had determined to spend on behalf of the Abrams campaign.

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The Abrams Committee and Lawrence B.  
Buttenwieser, as treasurer

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5. Please provide a copy of all documents prepared by the Abrams campaign relating to or discussing the amount of coordinated party expenditures to be spent by the DSCC on behalf of the Abrams campaign.

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS:    The Abrams Committee, f/k/a                    MUR 3620  
                  Abrams '92 Committee, and  
                  Lawrence B. Battenwieser,  
                  as treasurer

**I. GENERATION OF MATTER**

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This matter was generated by a complaint filed by the National Republican Senatorial Committee ("NRSC"). It challenges the Democratic Senatorial Campaign Committee (DSCC)'s "tally system," an accounting method used to keep track of the total funds raised for the DSCC by a particular candidate. Specifically, the complaint alleges that during the 1992 Senate race, the DSCC accepted contributions designated for Robert Abrams' tally account, which contributions were allegedly passed on to the Abrams '92 Committee (the "Abrams Campaign") as coordinated party expenditures. The complainant charges that this practice violates 2 U.S.C. § 441a(a)(8), which mandates that an "earmarked" contribution made through an intermediary be treated as a contribution from the donor to the candidate, and 11 C.F.R. § 110.6(c)(1)(i), which requires that the intermediary of an earmarked contribution disclose the source of the contribution and the recipient candidate. The complaint further alleges that by receiving coordinated party expenditures from the DSCC, the Abrams campaign accepted excessive contributions from donors who had already made the maximum allowable direct contributions to the Abrams campaign.



## II. FACTUAL AND LEGAL ANALYSIS

### A. The Act

The Federal Election Campaign Act of 1971, as amended, ("the Act") establishes dollar limits on contributions to candidates for Federal office. An individual may not contribute to a candidate (and the candidate's authorized committees) more than \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). In addition, an individual may contribute up to \$20,000 per calendar year to political committees established and maintained by a national political party that are not the authorized political committees of any candidate. 2 U.S.C. § 441a(a)(1)(B). The Act further provides that a candidate may not knowingly accept, and a political committee may not knowingly make, a contribution or expenditure in violation of the provisions of the Act. 2 U.S.C. § 441a(f).

A contribution made by a person, either directly or indirectly, on behalf of a particular candidate, which is in any way earmarked or otherwise directed through an intermediary or conduit, shall be treated as a contribution from such person to the candidate. 2 U.S.C. § 441a(a)(8). "Earmarked" means "a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee." 11 C.F.R. § 110.6(b)(1).

A "conduit" or "intermediary" means any person who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee (with certain exceptions not

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applicable here). 11 C.F.R. § 110.6(b)(2). In addition, 11 C.F.R. § 110.6(b)(2)(iii) provides that any person who receives an earmarked contribution shall, among other requirements, forward such earmarked contribution to the candidate or authorized committee in accordance with 11 C.F.R. § 102.8. Section 102.8 provides, inter alia, that earmarked contributions must be forwarded no later than 10 days after receipt.

Furthermore, the intermediary or conduit of an earmarked contribution must report the source of the contribution and the intended recipient to the Federal Election Commission and to the intended recipient. 2 U.S.C. § 441a(a)(8). See also 11 C.F.R. § 110.6(c)(1). Similarly, the recipient candidate committee must report earmarked contributions and each conduit or intermediary who forwards one or more earmarked contributions which in the aggregate exceed \$200 in any calendar year in accordance with 11 C.F.R. § 110.6(c)(2).

In addition, the Act authorizes the national and state committees of a political party to make additional expenditures in support of that party's candidates for federal office:

Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, . . . may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2) and (3) of this subsection.

2 U.S.C. § 441a(d)(1).

Paragraph (2) of this subsection applies to Presidential candidates and is not relevant here. Paragraph (3), which

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concerns candidates for Senate, provides that the national and State committees of a political party may each make expenditures which do not exceed the greater of \$20,000 or two cents multiplied by the voting age population of the State. See 2 U.S.C. § 441a(d)(3)(A) and 11 C.F.R. §§ 110.7(b)(1) and (b)(2)(i). These expenditures are generally referred to as "441a(d) expenditures" or "coordinated party expenditures." If a state party committee chooses not to make the expenditures permitted by section 441a(d), it may designate an agent, such as a national committee of the party, to make coordinated party expenditures on its behalf. FEC v. Democratic Senatorial Campaign Comm., 454 U.S. 27 (1981). The national committees are not capable of making independent expenditures in connection with the general election campaign of a candidate for Federal office. 11 C.F.R. § 110.7(b)(4).

**B. The Facts**

The complaint alleges that "tallied" contributions made to the DSCC were earmarked for the designated candidate. Therefore, it alleges that by participating in the tally system, the Abrams campaign accepted earmarked contributions -- in the form of coordinated party expenditures -- from donors who had already contributed the legal maximum to the Abrams campaign. In support of the allegations, the complainant submitted four documents, three with the original complaint and a fourth with a supplement to the complaint.

The first exhibit is a memorandum from the DSCC to "Senate AA's & Campaign Finance Directors" concerning the "Campaign

Countdown" program. The relevant portions read:

Please join the DSCC for a special program that will be of great benefit to your Senate campaign.

The program is designed for high dollar and max-out contributors to 1992 Senate campaigns.

On Wednesday afternoon September 9, the DSCC will host a campaign conference covering the latest information on the 1992 Senate races . . . .

That evening, donors and contributors will be invited to a special evening of cocktails at the McLean home of Senator & Mrs. Ted Kennedy (6:30 - 8:00 pm) followed by dinner at the home of Senator & Mrs. Charles S. Robb. The following morning, guests will be invited to breakfast at the home of Senator & Mrs. Jay Rockefeller.

The program is specifically designed to encourage max-out and high-dollar contributors to tally \$10,000 or more (per couple) in new money to their preferred Democratic Senate candidate(s).

This is an ideal opportunity for you to cultivate your high dollar prospects and encourage them to support their candidate(s) through the DSCC's tally system.

\* \* \*

Complaint dated October 16, 1992 ("Complaint"), Exhibit 1.

The second exhibit is a memorandum from the DSCC explaining the function of the Democratic Senatorial Campaign Committee in general, and the tally option specifically. It reads, in relevant portion:

**The Democratic Senatorial Campaign Committee**

**THE TALLY OPTION**

**WHAT ROLE DOES THE DSCC PLAY?**

**Funding Democratic Senate Nominees**

The primary function of the Democratic Senatorial Campaign Committee is to provide funding for Democratic Senate candidates in their quest for the U.S. Senate. The Finance Staff of the DSCC raises funds which are allocated to targeted Democratic Senate races based on the campaign's need and winability [sic]. These funds provide nominees with an invaluable source of additional

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funding which helps them keep their competitive edge . . . .

**WHY GIVE TO THE DSCC?**

Under FEC regulations, an individual may contribute a maximum of \$2000 to a Senate candidate. (\$1000 in the primary and another \$1000 to a general campaign fund). However, an individual may contribute up to \$20,000 annually to a political party organization like the DSCC. PAC's may contribute a maximum of \$15,000 annually to the DSCC. The Committee in turn allocates those funds to Democratic Senate candidates who are up for election in the current cycle. An individual (or PAC) is able to make the maximum legal contribution to assist Democratic Senate candidates financially by contributing to the DSCC.

**WHAT DOES "TALLY" MEAN?**

When contributing to the DSCC, a donor may request that his or her contribution be "tallied" to the Democratic Senate candidate(s) of their choice. This is a way for a donor to indicate their candidate preference(s) and how they would like their DSCC contribution distributed. Financial support to Senate candidates is determined by the Senators who comprise the allocation Committee of the DSCC. A candidate's "tallied" contributions are a key criterion considered in the Committee's allocation decisions.

\* \* \*

Id., Exhibit 2. It is not clear from the record whether this memorandum explaining the "Tally Option" was included with the DSCC's invitation to the "Campaign Countdown" -- or with any other solicitation.

Third, the complainant attached a newspaper article from the Albany Times-Union written during the New York Senate race. (The date is not specified.) Complaint, Exhibit 1. According to the article, Abrams' opponent, Alfonse D'Amato, claimed that Abrams encouraged his backers to evade contribution limits by earmarking their donations to the DSCC. Specifically, the article reports, D'Amato questioned whether Abrams urged his maxed-out contributors

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to send more money to the DSCC with the understanding that the funds would go to Abrams. Abrams' chief fundraiser is quoted as saying that a contribution to a party's national committee is "a legitimate device for the supporters of a Senate campaign." Id. Moreover, a DSCC spokesperson denied that the money in question is earmarked. He explained that information concerning a donor's preferred candidate is used as a "secondary consideration" in allocating funds. Id.

Finally, the complainant supplemented the complaint with a second Albany Times-Union article dated October 29, 1992, in which some of Abrams' donors reportedly acknowledged that they made donations to the DSCC with "either the understanding or expectation that their money would be then sent to Abrams." Supplement to Complaint dated October 29, 1992, Exhibit 1.

Specifically, one of Abrams' maxed-out supporters, Fred Hochberg, who gave \$4,000 to the DSCC, is quoted as saying, "It was simply a way I could support more completely [Abrams'] efforts." Id. The article further reads:

Asked why he expected that his contribution would go to Abrams, Hochberg said he was "told that you can give to Abrams and to the [DSCC] and ask that they can [sic] tally that money for a particular candidate."

Hochberg said he was informed of the practice in conversations with representatives of Abrams' campaign and the [DSCC]. "They said I could leave it to the [DSCC's] discretion or 'tally it.' That's the term they used."

"You simply tell them to tally it for Bob Abrams . . . or any particular race you want the funds to be used for," Hochberg said.

Another maxed-out Abrams donor, Ronald Stanton, gave the committee \$20,000 -- the legal limit -- just a week after the September primary. "I gave with the full expectation that the money would go to help [Abrams]," said Stanton, chief executive officer of Transamonia Co., a chemical shipping and trading firm in Manhattan.

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Asked how he had that expectation, Stanton said, "Well, I've been involved in other campaigns and that's just the way things seem to work." He said he did not specifically ask the committee to earmark his \$20,000 to Abrams, but it is clear that the committee knows he supports Abrams. "I think it was a given," he said, declining to elaborate.

Id.

A third Abrams supporter reportedly stated that he contributed to the DSCC with the "specific understanding" that his donation would be used to help Abrams:

"I was advised by the Abrams people," the donor said. The [DSCC] knew the donor was an Abrams backer because he wrote the check out to the [DSCC], then handed it over to the Abrams campaign, which in turn mailed his check and others to the [DSCC] -- a procedure Abrams fund-raisers have already acknowledged they use.

\* \* \*

Since the primary, according to federal records, more than \$450,000 was given to the DSCC by Abrams' deep-pocket backers. The DSCC, in turn, gave Abrams about \$700,000.

Id.

In the article, Abrams' campaign manager denied any earmarking. "They said the [DSCC] keeps track of a donor's address and preferred candidate but no one can specifically tell the [DSCC] how to spend its money. Chief among considerations is how close a race is and whether the Democratic candidate can win."

Id. Finally, at least one Abrams donor stated that he knew there was "no guarantee" that his contribution to the DSCC would end up with Abrams:

"I assumed that the [DSCC] is going to be helpful to all Senate candidates, including Bob [Abrams]. It is my hope and expectation that they will use some of those funds for Bob," said Steven Kumble, chairman of

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Lincolnshire Management, a Manhattan investment firm, who gave the committee \$7,500 on Sept. 30.

Id.

Based on the DSCC's solicitations, and in light of the statements quoted in the news articles, the complainant alleges that the Abrams campaign accepted excessive contributions and urged its individual contributors to evade the statutory limit on contributions to a candidate's committee.

C. The Responses

1. The DSCC

In its response, the DSCC explains that the "Tally Sheet" is an accounting process established to allow the DSCC to keep track of the amount of money raised for the DSCC by a particular candidate. Response of DSCC at 1. That total is then taken into consideration as one of several factors used when the DSCC makes funding decisions for the coordinated party expenditures authorized by 2 U.S.C. § 441a(d). Id. According to the DSCC, tallied contributions are not segregated from other funds. All tallied contributions (and all other contributions) are deposited into the DSCC's general bank accounts and used entirely at the DSCC's discretion. Id. at 2. Furthermore, the DSCC states that money tallied for a specific candidate is neither "passed through" to the candidate, nor spent on a dollar-for-dollar exchange for the amount raised by a candidate. Id. On the contrary, it submits that its express policy is to refuse earmarked donations. When it receives a donation that appears to be earmarked, the DSCC sends a form letter intended to clarify the contributor's intent.

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In support, the DSCC attached two sample form letters. Apart from the fact that the form letters refer to different candidates, the text in the letters is identical. One reads, in part:

Thank you for your contribution to the Democratic Senatorial Campaign Committee. . . .

On the check you designate the contribution to Dianne Feinstein. We assume that you intend the "tallying" or crediting of the contribution to Dianne Feinstein, which will be taken into account by DSCC in allocating funds in support of his [sic] re-election. Contributions "tallied" to a Senator are a significant factor in the Committee's allocation decisions.

We note that the amount to be allocated is decided by the DSCC within its discretion. For this reason the DSCC does not treat a contribution such as yours as "earmarked" and does not accept earmarked contributions.

If you have a different expectation about the uses of this contribution, we will promptly refund it to you at your request. Please advise if this is the case.

If you have any questions, please do not hesitate to contact me . . . .

Sincere thanks,

(signed)  
Grace M. Coyle  
Finance Assistant

Id., Exhibit A.

According to the DSCC, tallied funds deposited into DSCC accounts are used for any of the DSCC's most pressing expenses, such as administrative expenses or 441a(d) expenditures on behalf of another candidate. Id. at 2. The DSCC proffers that there have been candidates who raised large amounts of money for the DSCC, but received little or no 441a(d) funding in return (such as a barely challenged incumbent Senator). Id. In other cases, some candidates who raised little or no money for the DSCC received

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full funding under the limits established for coordinated party expenditures. Id.

The DSCC further proffers that it considers a variety of factors in determining which candidates will receive 441a(d) funding. It looks at:

- Whether the race is winnable;
- Whether the candidate has a serious challenger;
- Whether the candidate has been successful in raising funds for his or her own campaign;
- Whether the candidate has assisted the DSCC in its fundraising efforts;
- Whether the DSCC has more pressing expenditures that must be made. Id. at 2-3. According to the DSCC, these criteria have been repeatedly emphasized to contributors and candidates. Id. at 3. It contends that, "the significance of the tally, in short, is its role as an incentive to its candidates to support its fundraising efforts." Id.

Next, the DSCC argues that to view the tally system as earmarking would significantly weaken the national party's role as a source of funding for its candidates. It emphasizes the special spending authority, far in excess of the limits applicable to contributions, conferred on national party committees by section 441a(d). In 1992 in California, for example, the coordinated expenditure limits for National and State party committees for Senate candidates were approximately \$1.2 million each.<sup>1</sup> Id. The

1. FEC Record, Volume 18, Number 3 (March, 1992) at 4.

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DSCC argues that it cannot reasonably be expected to raise millions of dollars without the assistance of the Senate candidates it is authorized to fund. Id.

In addition, the DSCC contends that the National Republican Senatorial Committee engages in the same or similar type of fundraising practice as challenged in the complaints. As evidence, it submits a solicitation dated October 9, 1992, from Republican Senate candidate Paul Coverdell. The solicitation reads, in part:

I tried to contact you by phone to update you on our campaign to unseat Democrat Senator Wyche Fowler of Georgia.

A recent poll by the Senatorial Committee indicates that Fowler is extremely vulnerable in this anti-incumbent election year. . . .

\* \* \*

This has led to the Senatorial Committee fully funding the race and putting over \$500,000 into the campaign for television. We are trying to double our budget for television and you can make a difference. Please give me a call at [phone number].

If you can allocate any amount of your Senatorial Trust funds to our campaign, or have some other means of contributing, it could be the difference in our efforts to retire one of the Senate's most liberal members.

---

\_\_\_\_\_ I want to allocate \_\_\_\_\_ through the Senatorial Trust towards Paul's campaign.

\_\_\_\_\_ I want to pledge a contribution of \_\_\_\_\_.

\_\_\_\_\_ I would like to speak to Paul about his campaign. Please call my office to schedule a phone conversation.

Id., Exhibit B. There is nothing in the record which explains the specific nature of the "Senatorial Trust."

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Finally, the DSCC cites MUR 377, in which it was alleged that a state party committee accepted earmarked contributions when it sponsored a fundraiser for the expressed purpose of assisting a defeated candidate to retire his campaign debt. In that case, the Commission found no probable cause to believe that the state party committee or the candidate's committee committed the alleged violations, and it directed this Office to draft appropriate regulations governing the applicability of the earmarking statute to section 441a(d) expenditures. It appears, however, that a rulemaking proceeding was never completed. In the instant cases, the DSCC urges that if the Commission wishes to address this question, a rulemaking -- not an enforcement action -- is the appropriate forum. Id. at 4.<sup>2</sup>

## 2. The Abrams Campaign's Response

The Abrams campaign submits that its fundraisers informed potential contributors that donations to the DSCC "would not necessarily be used to help Abrams." Response of Abrams '92 and

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2. Of significance here, in two cases after MUR 377, the Commission found that contributions made to a state party committee and subsequently expended by the party committee on the designated candidate were earmarked. See MUR 752 (1978) (contributions found to be earmarked when the date and amount of a contribution by a non-profit corporation whose avowed purpose was to raise funds for a particular Senate candidate coincided almost exactly with the date and amount of the coordinated party expenditures made by the State committee on behalf of that candidate); and MUR 2632 (1990) (\$2,500 contribution to a state party committee found to be earmarked when the cover letter enclosing the check stated that the contribution was to "help in the election of John Evans to the United States Senate" and when upon receipt of the contribution, the state party committee expended more than \$12,000 on behalf of candidate John Evans for an "election day mailgram," and made other expenditures which appeared to relate to get-out-the vote activities on behalf of Evans).



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Ethan Geto, as treasurer ("Abrams Response") at 2. In support of its position, the Abrams campaign submits the sworn affidavit of the campaign's Finance Director, Mary Beth Pearlberg ("Pearlberg Affidavit"). In her affidavit, Pearlberg declares that, as Finance Director, she conducted or supervised the raising of campaign contributions. She informed solicitees that in addition to making a contribution to the campaign, they could give to the DSCC. She advised them, however, that contributions to the DSCC would not necessarily be used to help the Abrams campaign, but could be spent on behalf of many Democratic Senate candidates. Pearlberg Affidavit at ¶4. She also informed solicitees that if the DSCC chose to make expenditures on behalf of Abrams, the money would most likely be spent on television and radio advertising. Id. at ¶5.

Pearlberg further declares that she informed those who chose to contribute to the DSCC to notify the DSCC that they supported Abrams, so the DSCC would list the contributions on Abrams' tally. Id. at ¶6. She also informed solicitees that contributions to the DSCC could not be earmarked for use on behalf of the Abrams campaign. Id. at ¶7. Moreover, she declares that the DSCC advised her that the total contributions tallied to Abrams would be one of many factors considered when the DSCC made its spending decisions. Id. at ¶9. Finally, Pearlberg proffers that the DSCC informed her that it does not accept earmarked contributions. Id. at ¶11.

In addition, the Abrams campaign argues that the quotation from Abrams' chief fundraiser in the Albany Times-Union article

that the DSCC would "typically credit" tallied contributions to a candidate's campaign is consistent with the purpose of the tally system and suggests no violation of the Act. The campaign stresses that simply because contributions were credited to the Abrams campaign does not mean that the credited funds were spent on Abrams' behalf. "Crediting is one thing, spending is another." Abrams Response at 2.

In conclusion, the Abrams campaign maintains that a contributor's notation that a contribution was solicited for a particular candidate's "tally" does not constitute an "encumbrance" within the meaning of 11 C.F.R. § 110.6(b)(2). Finally, the Abrams Campaign also cites MUR 377, in which the Commission directed that regulations should be drafted addressing this issue. It contends that if the Commission wishes to impose "additional rules in this special area of fundraising involving a party committee's spending authority," it should do so through a rulemaking proceeding.

### III. DISCUSSION

The information disseminated by the DSCC, along with the reported comments from some of Abrams' supporters, supports the conclusion that contributors who made "tallied" contributions to the DSCC designated for the Abrams campaign intended that their contributions be earmarked for that candidate. Therefore, the contributions should have been treated as earmarked, viz. forwarded to the recipient candidate committee within 10 days, reported as earmarked by the conduit and the recipient, and

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applied to each contributor's per-candidate limit.<sup>3</sup> Specifically, the memoranda from the DSCC are phrased in a way that at least suggests to the donor that a tallied contribution will be expended on the designated candidate. For example, the DSCC's memorandum explaining the tally system states:

This is a way for a donor to indicate their candidate preference(s) and how they [sic] would like their DSCC contribution distributed. Financial support to Senate candidates is determined by the Senators who comprise the allocation Committee of the DSCC. A candidate's "tallied" contributions are a key criterion considered in the Committee's allocation decisions.

Complaint, Exhibit 2 (emphasis added).

While this paragraph explains that tallied contributions are one key criterion on which the DSCC's allocation decisions are based, it also states that the tally system is a method through which donors can indicate how "they would like their DSCC contribution distributed." This could leave the impression that the donors can designate the ultimate recipient of a contribution.

The DSCC's invitation to the Campaign Countdown is even more explicit:

The Campaign Countdown is designed for a Senate campaign's max-out donors and top contributors who are interested in further supporting their candidates through the DSCC's tally system. . . . The program is designed for donors who would like to tally \$10,000 or more in new money to their preferred Senate candidate(s). . . .

Complaint, Exhibit 1 (emphasis added). Bearing in mind that this invitation was sent to contributors, it appears that the invitees could reasonably conclude that the "new money" referred to would

3. See 2 U.S.C. § 441a(a)(8); and 11 C.F.R. §§ 110.6(b)(2)(iii), 102.8, and 110.6(c)(2).

be "new" or additional money to the designated candidate.

In addition, the reported statements from some of the Abrams contributors, although purely anecdotal, may offer some insight into some donors' intentions and understanding. Although one donor reportedly declared that he assumed that his donation to the DSCC would help all Democratic Senate candidates (Supplement to Complaint, Exhibit 1), three others reportedly said that they believed that their donations would be used for the Abrams campaign. One allegedly said that, "You simply tell [the DSCC] to tally it for Bob Abrams . . . or any particular race you want the funds to be used for." Another donor is quoted as saying, "I gave with the full expectation that the money would go to help [Abrams]." Finally, a third contributor reportedly stated that he had the specific understanding that his donation would be used to help Abrams because "I was advised by the Abrams people." Id. If these statements are accurate, they add further evidence that at least some of the individuals who made contributions to the DSCC for Abrams' tally account did intend to earmark their contributions.

In summary, the evidence shows that the DSCC's tally system targeted a candidate's "maxed-out" contributors. Furthermore, the documents from the DSCC at least suggest that a tallied contribution will be used to help the designated candidate. Under these circumstances, it appears that contributors who made tallied contributions in response to the memoranda from the DSCC could reasonably intend and expect that a tallied contribution would be used to support the designated candidate. The published

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statements from some of Abrams' supporters bolster this conclusion.

Consequently, it appears that donors who made a contribution to the DSCC that was tallied for a particular candidate intended at least an "implied encumbrance" within the meaning of the earmarking regulation, 11 C.F.R. § 110.6(b)(1). Correspondingly, it appears that the DSCC was the intended intermediary or conduit of the earmarked contributions within the meaning of 11 C.F.R. § 110.6(b)(2).

Furthermore, the DSCC's letter to contributors purportedly refusing earmarked donations does not refute the finding that the contributors intended that tallied contributions be earmarked, nor does it properly "correct" such an intention. An example of the form letter reads, in pertinent part:

On the check you designate the contribution to Dianne Feinstein. We assume that you intend the "tallying" or crediting of the contribution to Dianne Feinstein, which will be taken into account by DSCC in allocating funds in support of [her] re-election. . . .

[T]he DSCC does not treat a contribution such as yours as "earmarked" and does not accept earmarked contributions.

If you have a different expectation about the uses of this contribution, we will promptly refund it to you at your request. Please advise if this is the case.

Response of DSCC, Exhibit A.

First, this letter puts the onus on the contributor by requiring that the contributor take the affirmative step of contacting the DSCC if he or she has "a different expectation" about the uses of the contribution. It can be expected that many contributors would simply not bother to exert the effort to obtain

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a refund. Moreover, this letter is less than clear; it recognizes the previous designation and, to the extent it contradicts the candidate's solicitation, it does so only if the reader understands the DSCC's proposed distinction between "earmarking" and "designation."

Similarly, the Pearlberg Affidavit does not establish whether contributors understood or intended that their tallied contributions be earmarked, particularly those who donated in response to the memoranda from the DSCC. In sum, despite the DSCC's proffer that its policy is to refuse earmarked contributions and despite the declarations set forth in the Pearlberg Affidavit, it appears, based on the totality of the circumstances, that sending a contribution that is "tallied" to a specific candidate to the DSCC constitutes earmarking.

Based upon the available record, it appears that at least some of Abrams' contributors did intend to make earmarked contributions. Assuming that the DSCC "passed through" tallied contributions to the candidate in the form of coordinated party expenditures, as alleged, there is reason to believe that the Abrams campaign failed to report the earmarked contributions and that the DSCC acted as a conduit for earmarked contributions, as required by 11 C.F.R. § 110.6(c)(2). Moreover, to the extent such contributions came from: (1) a donor whose "tallied" contribution(s) exceeded the statutory maximum for an individual's contributions to a candidate; or (2) a donor who had already made the maximum contribution to the Abrams campaign, it appears that the Abrams Committee accepted excessive contributions, in

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violation of 2 U.S.C. § 441a(f). Therefore, there is reason to believe that the Abrams Committee, f/k/a Abrams '92 Committee, and Lawrence B. Bittenwieser, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2).

MERGER OF MURS

After finding reason to believe that violations occurred in MUR 3617 and MUR 3658, the Commission voted to merge MUR 3617 and MUR 3658 into MUR 3620 and to hereafter refer to the entire matter as MUR 3620.

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20461

October 17, 1994

Gregory M. Harvey, Esquire  
Morgan, Lewis & Bockius  
2000 One Logan Square  
Philadelphia, PA 19103

RE: MUR 3620  
Lynn Yeakel for Senate and  
Sidney D. Rosenblatt, as  
treasurer

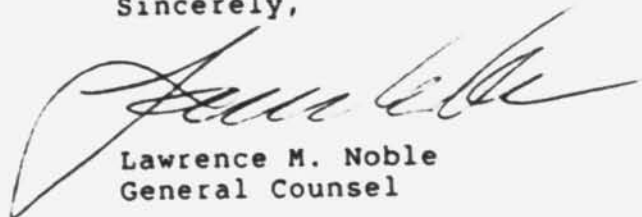
Dear Mr. Harvey:

On September 29, 1992, the Federal Election Commission ("Commission") notified your clients, Lynn Yeakel for Senate and Sidney D. Rosenblatt, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. In addition, you were notified of the supplements on November 4, 1992 and January 11, 1993.

On October 4, 1994, the Commission found, on the basis of the information in the complaint and supplements, and information provided by you, that there is no reason to believe Lynn Yeakel for Senate and Sidney D. Rosenblatt, as treasurer, violated 2 U.S.C. § 441a(f) of the Act and 11 C.F.R. § 110.6(c)(2) of the Commission's regulations. Accordingly, the Commission closed its file in this matter as it pertains to Lynn Yeakel for Senate and Sidney D. Rosenblatt, as treasurer. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all other respondents involved. 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.

Sincerely,



Lawrence M. Noble  
General Counsel

Enclosure  
Factual & Legal Analysis

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**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

MUR: 3620

RESPONDENTS: The Yeakel for Senate Committee and  
Sidney D. Rosenblatt, as treasurer

**I. GENERATION OF MATTER**

This case arises from a complaint filed by the National Republican Senatorial Committee ("NRSC") with the Federal Election Commission ("Commission") against the Yeakel for Senate Committee (the "Yeakel campaign") during the 1992 election cycle. At issue is whether certain contributions made to the Democratic Senatorial Campaign Committee ("DSCC") were earmarked for the Yeakel campaign.

The complaint challenges the DSCC's "tally system," an accounting method used to keep track of the total funds raised for the DSCC by a particular candidate. Specifically, it alleges that during the 1992 Senate race, the DSCC accepted contributions designated for a specific candidate's tally account, which contributions were allegedly "passed through" to the designated candidate in the form of coordinated party expenditures. The complainant charges that this practice violates 2 U.S.C. § 441a(a)(8), which mandates that an "earmarked" contribution made through an intermediary be treated as a contribution from the donor to the candidate, and 11 C.F.R. § 110.6(c)(1)(i), which requires that the intermediary of an earmarked contribution disclose the source of the contribution and the recipient candidate. The complaint further alleges that by receiving

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coordinated party expenditures from the DSCC, the Yeakel campaign accepted excessive contributions from: (1) donors whose tallied contributions to the DSCC exceeded the statutory limit for an individual's contributions to a candidate; and (2) donors who had already made the maximum allowable direct contributions to the Yeakel campaign (informally referred to by the Respondents as "maxed-out" or "max-out" contributors).

## II. FACTUAL AND LEGAL ANALYSIS

### A. The Act

The Federal Election Campaign Act of 1971, as amended, ("the Act") establishes dollar limits on contributions to candidates for Federal office. An individual may not contribute to a candidate (and the candidate's authorized committees) more than \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). In addition, an individual may contribute up to \$20,000 per calendar year to political committees established and maintained by a national political party that are not the authorized political committees of any candidate. 2 U.S.C. § 441a(a)(1)(B). The Act further provides that a candidate may not knowingly accept, and a political committee may not knowingly make, a contribution or expenditure in violation of the provisions of the Act. 2 U.S.C. § 441a(f).

A contribution made by a person, either directly or indirectly, on behalf of a particular candidate, which is in any way earmarked or otherwise directed through an intermediary or conduit, shall be treated as a contribution from such person to the candidate. 2 U.S.C. § 441a(a)(8). "Earmarked" means "a designation, instruction, or encumbrance, whether direct or

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indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee." 11 C.F.R. § 110.6(b)(1).

A "conduit" or "intermediary" means any person who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee (with certain exceptions not applicable here). 11 C.F.R. § 110.6(b)(2). In addition, 11 C.F.R. § 110.6(b)(2)(iii) provides that any person who receives an earmarked contribution shall, among other requirements, forward such earmarked contribution to the candidate or authorized committee in accordance with 11 C.F.R. § 102.8. Section 102.8 provides, inter alia, that earmarked contributions must be forwarded no later than 10 days after receipt.

Furthermore, the intermediary or conduit of an earmarked contribution must report the source of the contribution and the intended recipient to the Federal Election Commission and to the intended recipient. 2 U.S.C. § 441a(a)(8). See also 11 C.F.R. § 110.6(c)(1). Similarly, the recipient candidate committee must report earmarked contributions and each conduit or intermediary who forwards one or more earmarked contributions which in the aggregate exceed \$200 in any calendar year in accordance with 11 C.F.R. § 110.6(c)(2).

In addition, the Act authorizes the national and state committees of a political party to make additional expenditures in support of that party's candidates for federal office:

Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on

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contributions, the national committee of a political party and a State committee of a political party, . . . may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2) and (3) of this subsection.

2 U.S.C. § 441a(d)(1).

Paragraph (2) of this subsection applies to Presidential candidates and is not relevant here. Paragraph (3), which concerns candidates for Senate, provides that the national and State committees of a political party may each make expenditures which do not exceed the greater of \$20,000 or two cents multiplied by the voting age population of the State. See 2 U.S.C. § 441a(d)(3)(A) and 11 C.F.R. §§ 110.7(b)(1) and (b)(2)(i). These expenditures are generally referred to as "441a(d) expenditures" or "coordinated party expenditures." If a state party committee chooses not to make the expenditures permitted by section 441a(d), it may designate an agent, such as a national committee of the party, to make coordinated party expenditures on its behalf. FEC v. Democratic Senatorial Campaign Comm., 454 U.S. 27 (1981). The national committees are not capable of making independent expenditures in connection with the general election campaign of a candidate for Federal office. 11 C.F.R. § 110.7(b)(4).

**B. The Facts**

The complaint alleges that "tallied" contributions made to the DSCC were earmarked for the designated candidate. Therefore, it alleges that by participating in the tally system, the Yeakel campaign accepted excessive contributions -- in the form of coordinated party expenditures -- from donors who had already

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contributed the legal maximum to the Yeakel campaign. The complainant submitted several exhibits in support of its allegations against the Yeakel campaign.

The first three exhibits are solicitations and memoranda from the DSCC. Exhibit one is an invitation from the DSCC to contributors for an event entitled "U.S. Senate Campaign Countdown," which is described as a:

special conference designed to provide strategic information on the 1992 U.S. Senate campaigns followed by a special program of cocktails, dinner and breakfast at the private homes of Senators Kennedy, Robb and Rockefeller.

The invitation goes on to discuss the DSCC's tally system:

The Campaign Countdown is designed for a Senate campaign's max-out donors and top contributors who are interested in further supporting their candidates through the DSCC's tally system. The DSCC provides donors with the opportunity to tally their contributions to the Democratic Senate nominees of their choice. The program is designed for donors who would like to tally \$10,000 or more in new money to their preferred Senate candidate(s) and who would like to join one of the DSCC's elite donor programs.

Complaint, Exhibit 1.

The second exhibit is a memorandum from the DSCC explaining the function of the Democratic Senatorial Campaign Committee in general, and the tally option specifically. It reads, in relevant portion:

The Democratic Senatorial Campaign Committee

#### THE TALLY OPTION

##### WHAT ROLE DOES THE DSCC PLAY?

##### Funding Democratic Senate Nominees

The primary function of the Democratic Senatorial Campaign Committee is to provide funding for Democratic Senate candidates in their quest for the U.S. Senate. The Finance Staff of the DSCC raises funds which are allocated to targeted Democratic Senate races based on

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the campaign's need and winability [sic]. These funds provide nominees with an invaluable source of additional funding which helps them keep their competitive edge . . . .

**WHY GIVE TO THE DSCC?**

Under FEC regulations, an individual may contribute a maximum of \$2000 to a Senate candidate. (\$1000 in the primary and another \$1000 to a general campaign fund). However, an individual may contribute up to \$20,000 annually to a political party organization like the DSCC. PAC's may contribute a maximum of \$15,000 annually to the DSCC. The Committee in turn allocates those funds to Democratic Senate candidates who are up for election in the current cycle. An individual (or PAC) is able to make the maximum legal contribution to assist Democratic Senate candidates financially by contributing to the DSCC.

**WHAT DOES "TALLY" MEAN?**

When contributing to the DSCC, a donor may request that his or her contribution be "tallied" to the Democratic Senate candidate(s) of their choice. This is a way for a donor to indicate their candidate preference(s) and how they would like their DSCC contribution distributed. Financial support to Senate candidates is determined by the Senators who comprise the allocation Committee of the DSCC. A candidate's "tallied" contributions are a key criterion considered in the Committee's allocation decisions.

\* \* \*

**Complaint, Exhibit 2.**

The third exhibit to the complaint is a memorandum from the DSCC to "Senate AA's & Campaign Finance Directors" concerning the "Campaign Countdown" program. The relevant portions read:

Please join the DSCC for a special program that will be of great benefit to your Senate campaign.

The program is designed for high dollar and max-out contributors to 1992 Senate campaigns.

On Wednesday afternoon September 9, the DSCC will host a campaign conference covering the latest information on the 1992 Senate races . . . .

That evening, donors and contributors will be invited to a special evening of cocktails at the McLean home of Senator & Mrs. Ted Kennedy (6:30 - 8:00 pm) followed by

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dinner at the home of Senator & Mrs. Charles S. Robb.  
The following morning, guests will be invited to  
breakfast at the home of Senator & Mrs. Jay Rockefeller.

The program is specifically designed to encourage  
max-out and high-dollar contributors to tally \$10,000 or  
more (per couple) in new money to their preferred  
Democratic Senate candidate(s).

This is an ideal opportunity for you to cultivate your  
high dollar prospects and encourage them to support  
their candidate(s) through the DSCC's tally system.

\* \* \*

Complaint, Exhibit 3.

Finally, the complainant submitted a DSCC invitation for a  
dinner honoring Lynn Yeakel. It reads, in full:

Norma and Irma Braman

request the pleasure of your company

at a dinner honoring

Lynn Yeakel

Candidate for United States Senate

followed by

The Philadelphia Eagles vs. The Dallas Cowboys

Monday evening, the fifth of October  
nineteen hundred and ninety-two

seven o'clock Dinner  
nine o'clock Kickoff

Veterans Stadium  
Philadelphia, Pennsylvania

Contribution \$5,000

RSVP [Phone Number]

Checks payable to "Democratic Senatorial  
Campaign Committee"

Complaint, Exhibit 6. The response card accompanying the  
invitation makes no mention of Lynn Yeakel or the tally system.

Id.

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Based on this solicitation, the complaint alleges that the DSCC and the Yeakel campaign evaded the statutory limits on campaign contributions by urging the campaign's "maxed-out" contributors to make tallied contributions to the DSCC, which were allegedly passed through to the candidate in the form of coordinated party expenditures.

C. The Responses

1. The DSCC

In its response, the DSCC explains that the "Tally Sheet" is an accounting process established to allow the DSCC to keep track of the amount of money raised for the DSCC by a particular candidate. Response of the DSCC at 1. That total is then taken into consideration as one of several factors used when the DSCC makes funding decisions for the coordinated party expenditures authorized by 2 U.S.C. § 441a(d). Id. According to the DSCC, tallied contributions are not segregated from other funds. All tallied contributions (and all other contributions) are deposited into the DSCC's general bank accounts and used entirely at the DSCC's discretion. Id. at 2. Furthermore, the DSCC states that money tallied for a specific candidate is neither "passed through" to the candidate, nor spent on a dollar-for-dollar exchange for the amount raised by a candidate. Id. On the contrary, it submits that its express policy is to refuse earmarked donations. When it receives a donation that appears to be earmarked, the DSCC sends a form letter intended to clarify the contributor's intent. In support, the DSCC attached two sample form letters. Apart from the fact that the form letters refer to different

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candidates, the text in the letters is identical. One reads, in part:

Thank you for your contribution to the Democratic Senatorial Campaign Committee. . . .

On the check you designate the contribution to Dianne Feinstein. We assume that you intend the "tallying" or crediting of the contribution to Dianne Feinstein, which will be taken into account by DSCC in allocating funds in support of his [sic] re-election. Contributions "tallied" to a Senator are a significant factor in the Committee's allocation decisions.

We note that the amount to be allocated is decided by the DSCC within its discretion. For this reason the DSCC does not treat a contribution such as yours as "earmarked" and does not accept earmarked contributions.

If you have a different expectation about the uses of this contribution, we will promptly refund it to you at your request. Please advise if this is the case.

If you have any questions, please do not hesitate to contact me at (phone number). I appreciate your cooperation in this matter.

Sincere thanks,

(signed)  
Grace M. Coyle  
Finance Assistant

Id., Exhibit A.

According to the DSCC, tallied funds deposited into DSCC accounts are used for any of the DSCC's most pressing expenses, such as administrative expenses or 441a(d) expenditures on behalf of another candidate. Id. at 2. The DSCC proffers that there have been candidates who raised large amounts of money for the DSCC, but received little or no 441a(d) funding in return (such as a barely challenged incumbent Senator). Id. In other cases, some candidates who raised little or no money for the DSCC received

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full funding under the limits established for coordinated party expenditures. Id.

The DSCC further proffers that it considers a variety of factors in determining which candidates will receive 441a(d) funding. It looks at:

- Whether the race is winnable;
- Whether the candidate has a serious challenger;
- Whether the candidate has been successful in raising funds for his or her own campaign;
- Whether the candidate has assisted the DSCC in its fundraising efforts;
- Whether the DSCC has more pressing expenditures that must be made. Id. at 2-3.

According to the DSCC, these criteria have been repeatedly emphasized to contributors and candidates. Id. at 3. It contends that, "the significance of the tally, in short, is its role as an incentive to its candidates to support its fundraising efforts." Id.

Next, the DSCC argues that to view the tally system as earmarking would significantly weaken the national party's role as a source of funding for its candidates. It emphasizes the special spending authority, far in excess of the limits applicable to contributions, conferred on national party committees by section 441a(d). In 1992 in California, for example, the coordinated expenditure limits for National and State party committees for

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Senate candidates were approximately \$1.2 million each.<sup>1</sup> Id. The DSCC argues that it cannot reasonably be expected to raise millions of dollars without the assistance of the Senate candidates it is authorized to fund. Id.

In addition, the DSCC contends that the National Republican Senatorial Committee engages in the same type of fundraising practice challenged in the complaints. As evidence, it submits a solicitation dated October 9, 1992, from Republican Senate candidate Paul Coverdell. The solicitation reads, in part:

I tried to contact you by phone to update you on our campaign to unseat Democrat Senator Wyche Fowler of Georgia.

A recent poll by the Senatorial Committee indicates that Fowler is extremely vulnerable in this anti-incumbent election year. . . .

\* \* \*

This has led to the Senatorial Committee fully funding the race and putting over \$500,000 into the campaign for television. We are trying to double our budget for television and you can make a difference. Please give me a call at [phone number].

If you can allocate any amount of your Senatorial Trust funds to our campaign, or have some other means of contributing, it could be the difference in our efforts to retire one of the Senate's most liberal members.

---

\_\_\_\_\_ I want to allocate \_\_\_\_\_ through the Senatorial Trust towards Paul's campaign.

\_\_\_\_\_ I want to pledge a contribution of \_\_\_\_\_.

\_\_\_\_\_ I would like to speak to Paul about his campaign. Please call my office to schedule a phone conversation.

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1. FEC Record, Volume 18, Number 3 (March, 1992) at 4.

Id., Exhibit B. There is nothing in the record which explains the specific nature of the "Senatorial Trust."

Finally, the DSCC cites MUR 377, in which it was alleged that a state party committee accepted earmarked contributions when it sponsored a fundraiser for the expressed purpose of assisting a defeated candidate to retire his campaign debt. In that case, the Commission found no probable cause to believe that the state party committee or the candidate's committee committed the alleged violations, and it directed this Office to draft appropriate regulations governing the applicability of the earmarking statute to section 441a(d) expenditures. It appears, however, that a rulemaking proceeding was never completed. In the instant case, the DSCC urges that if the Commission wishes to address this question, a rulemaking -- not an enforcement action -- is the appropriate forum. Id. at 4.<sup>2</sup>

## 2. The Yeakel Campaign

The Yeakel campaign adopts the facts and arguments set forth

---

2. Of significance here, in two cases after MUR 377, the Commission found that contributions made to a state party committee and subsequently expended by the party committee on the designated candidate were earmarked. See MUR 752 (1978) (contributions found to be earmarked when the date and amount of a contribution by a non-profit corporation whose avowed purpose was to raise funds for a particular Senate candidate coincided almost exactly with the date and amount of the coordinated party expenditures made by the State committee on behalf of that candidate); and MUR 2632 (1990) (\$2,500 contribution to a state party committee found to be earmarked when the cover letter enclosing the check stated that the contribution was to "help in the election of John Evans to the United States Senate" and when upon receipt of the contribution, the state party committee expended more than \$12,000 on behalf of candidate John Evans for an "election day mailgram," and made other expenditures which appeared to relate to get-out-the vote activities on behalf of Evans).

by the DSCC. Response of Yeakel for Senate Committee at 1. Furthermore, it argues, none of the facts set forth in the complaint supports a finding that the Yeakel campaign committed any of the alleged violations. It notes that the invitation which allegedly supports the claims against Yeakel is for a dinner "honoring Lynn Yeakel." The invitation plainly states that it is "Authorized and paid for by the Democratic Senatorial Campaign Committee" and the reply envelope is addressed to the DSCC. Nothing in any of the materials proffered by the complainant indicates that any of the communications at issue are attributable to the Yeakel campaign. In conclusion, it submits that:

If the Commission were to determine that the mere presence of a candidate at an event sponsored by a party committee could be the basis of enforcement action against either that party committee or the individual candidate's authorized committee, such a determination would place in doubt literally tens of millions of contribution dollars raised by both major parties in the 1992 general election cycle.

Id. at 2.

### III. DISCUSSION

The evidence presented does not support the allegation that the Yeakel for Senate Committee participated in the DSCC's tally program. The only evidence relating to the Yeakel campaign is a DSCC invitation to a dinner "honoring" Lynn Yeakel. There is no indication that the campaign participated in the tally program, and there are no facts in this record which suggest that Yeakel accepted excessive contributions. Neither the invitation nor the reply card even mentions the tally program. Indeed, the invitation in question demonstrates nothing more than that Yeakel

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was honored at the dinner. As the Yeakel campaign argues, nothing in the Act prohibits the attendance of a candidate at an event sponsored by a national party committee.

Therefore, there is no reason to believe, based on the allegations of the complaint, that the Yeakel for Senate Committee and Sidney D. Rosenblatt, as treasurer, violated 2 U.S.C. § 441a(f) or any other applicable section of the Act.

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# PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011  
(202) 628-6600 • FACSIMILE (202) 434-1690

JUDITH L. CORLEY  
(202) 434-1622

October 28, 1994

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
OCT 31 9 18 AM '94

Mary Ann Bumgarner  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

**Re: MUR 3620 - Democratic Senatorial Campaign Committee**

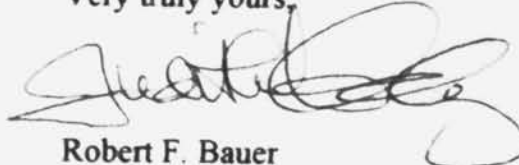
Dear Ms. Bumgarner:

This is to request an extension of time of 90 days to respond to the Commission's Reason To Believe finding and interrogatories and requests for documents.

Although we are aware that the General Counsel does not ordinarily grant extensions of time beyond 20 days, we believe that the longer extension is warranted in this case. First, the 1994 general election is 10 days away and it would be extremely difficult during this period, or immediately thereafter, to obtain the necessary time of the DSCC's staff or the resources of the Committee that will be required to respond to the Commission's requests. Second, the holiday season that follows the election (Thanksgiving, Hanukkah and Christmas) and the taking of long postponed vacations by DSCC staff will further complicate our efforts in this matter. Third, the interrogatories and requests for documents are extensive (taking up 16 pages) and will require substantial amounts of research and production time.

With the extension of 90 days, the response would be filed with the Commission on January 23, 1995. If you have any questions, or need additional information, please contact one of the undersigned.

Very truly yours,



Robert F. Bauer  
Judith L. Corley  
Counsel to Respondents

[04005-0048 DA943010 006]





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

Nov 4 10 22 AM '94

November 4, 1994

**SENSITIVE**

**MEMORANDUM**

TO: The Commission

FROM: Lawrence M. Noble  
General Counsel

SUBJECT: MUR 3620 --  
Request for Extension of Time

By letter dated October 28, 1994, counsel for the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, ("DSCC") request an extension until January 23, 1995, in which to respond to the Commission's reason to believe findings and Order to Submit Written Answers and Subpoena to Produce Documents. Attachment 1. In effect, counsel's request is for a 64 day extension because the original due date for the response in this matter is November 20, 1994. In their letter, counsel for the DSCC explains that additional time is necessary in light of the impending general election and holiday season. In addition, counsel states that "the taking of long postponed vacations by DSCC staff will further complicate our efforts in this matter." Id. Counsel concludes by asserting that the Order and Subpoena are extensive and will "require substantial amounts of research and production time." Id.

Although this Office does not believe that the impending general election and vacation schedules of DSCC staff are necessarily appropriate grounds for an extension of time, we do recognize that the discovery requests in this matter are extensive. Thus, this Office does not believe that counsel's request for a 64 day extension of time is unreasonable. Accordingly, the Office of the General Counsel recommends that the Commission grant the requested extension until January 23, 1995. This Office intends to make clear to counsel that this extension is being granted for them to respond substantively to the discovery requests and that the Commission expects full and complete responses. This Office will remind counsel that the time for filing a motion to quash has passed and that this extension does not extend the deadline for filing such a motion. Finally, we will advise them that further extensions will not be permitted.

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**RECOMMENDATIONS**

1. Grant the extension of time until January 23, 1995, to the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer.
2. Approve the appropriate letter.

**Attachment**  
**Request for Extension**

**Attorney assigned:** Mary Ann Bumgarner


95043690358



FEDERAL ELECTION COMMISSION  
WASHINGTON DC 20461

MEMORANDUM

TO: LAWRENCE M. NOBLE  
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS   
COMMISSION SECRETARY

DATE: NOVEMBER 8, 1994

SUBJECT: MUR 3620 - MEMORANDUM TO THE COMMISSION  
DATED NOVEMBER 4, 1994.

The above-captioned document was circulated to the  
Commission on Friday, November 4, 1994 at 4:00 p.m.

Objection(s) have been received from the  
Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	_____
Commissioner Elliott	_____
Commissioner McDonald	_____
Commissioner McGarry	_____
Commissioner Potter	<u>XXX</u>
Commissioner Thomas	_____

This matter will be placed on the meeting agenda  
for Tuesday, November 15, 1994.

Please notify us who will represent your Division before  
the Commission on this matter.

95043690359

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) MUR 3620  
Democratic Senatorial Campaign )  
Committee and Donald J. Foley, as )  
treasurer -- Request for Extension )  
of time )

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on November 15, 1994, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 3620:

1. Grant the extension of time until January 23, 1995, to the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer.
2. Approve the appropriate letter as recommended in the General Counsel's memorandum dated November 4, 1994.

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

Attest:

11-15-94  
Date

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

95043690300



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

November 17, 1994

Robert F. Bauer, Esquire  
Judith L. Corley, Esquire  
Perkins Coie  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2011

RE: MUR 3620  
Democratic Senatorial Campaign  
Committee and Donald J. Foley,  
as treasurer

Dear Mr. Bauer and Ms. Corley:

This is in response to your letter dated October 28, 1994, which we received on October 31, 1994, requesting an extension until January 23, 1995, to respond to the Commission's reason to believe findings and Order to Submit Written Answers and Subpoena to Produce Documents. After considering the circumstances presented in your letter, the Commission has granted the requested extension. Accordingly, your response is due by the close of business on January 23, 1995.

The Commission approved an extension in this matter for you to respond substantively to the discovery requests. The Commission expects full and complete responses to its Order and Subpoena. This Office reminds you that the time for filing a motion to quash has passed and that this extension does not extend the deadline for filing such a motion. Finally, further extensions will not be permitted in this matter.

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

Sincerely,

A handwritten signature in cursive script, reading "Mary Ann Bumgarner", is written above the typed name.

Mary Ann Bumgarner  
Attorney

95043690361

OLDAKER, RYAN & LEONARD

ATTORNEYS AT LAW

818 CONNECTICUT AVENUE, N.W.  
SUITE 1100  
WASHINGTON, D.C. 20006

(202) 728-1010

FACSIMILE (202) 728-4044

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

Nov 7 12 03 PM '94

November 4, 1994

Ms. Mary Ann Bumgarner, Esq.  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

RE: MUR 3620  
Feinstein for Senate Committee and  
Michael J. Barrett, as Treasurer

Dear Ms. Bumgarner:

As I indicated to you yesterday, I am requesting an extension of time to respond to the Commission's Order to Submit Written Answers and Subpoena to Produce Documents in the above-referenced matter. As you noted in your letter of November 1, these documents were sent to my previous office address and therefore were not received by me until they were resent by you on the 1st, making a response due on December 1, 1994. However, due to the following reasons, it will be virtually impossible for me to respond by that date.

First, it will be several weeks before I will be able to contact those employees of the '92 campaign committee to provide me with the information necessary for a response because of the impending election and subsequent wind down period. Second, I have made a preliminary inquiry regarding the possible locations of documents responsive to the subpoena and it appears that these documents may be in multiple locations in California in the custody of several different persons, as well as in different storage facilities. Thus, while the number of responsive documents we have may not be large, the search for them will be extremely time-consuming. Third, we are quickly coming upon the holiday season when employees of the Feinstein committee as well as myself and my staff have pre-set vacation plans and will be out of the office. Because of the election year, we have postponed our vacations until December and January. Fourth, I have other pending matters which will require substantial amounts of time and resources during this period. And finally, it has been over two years since the filing of these

complaints and I was unaware until now that the I would need to devote time to this matter and therefore, was unable to plan accordingly.

In consideration of the foregoing reasons, we are asking that the Commission grant a 90-day extension of time to respond to this matter, making a response due on March 1, 1995. If the Commission grants this extension, we will make every effort to respond sooner if it is at all possible.

I would greatly appreciate your assistance and understanding in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lyn Utrecht".

Lyn Utrecht

95043690363





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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FEDERAL ELECTION  
COMMISSION  
SECRETARIAT


Nov 9 12:07 PM '94

**SENSITIVE**

November 9, 1994

**MEMORANDUM**

TO: The Commission

FROM: Lawrence M. Noble  
General Counsel 

SUBJECT: MUR 3620 --  
Request for Extension of Time

By letter dated November 4, 1994, counsel for the Feinstein for Senate Committee and Michael J. Barrett, as treasurer, ("Feinstein Committee") requests an extension of 90 days, until March 1, 1995, in which to respond to the Commission's reason to believe findings and Order to Submit Written Answers and Subpoena to Produce Documents. Attachment 1. In her letter, counsel for the Feinstein Committee explains that additional time is necessary in light of the impending general election and "subsequent wind down period" and because of the upcoming holiday season and "pre-set vacation plans." Id. Counsel also asserts that she has done a preliminary inquiry regarding the possible locations of documents responsive to the Subpoena and they appear to be in "multiple locations in California in the custody of several different persons, as well as in different storage facilities." Id. Thus, counsel concludes that the search for these documents will be "extremely time-consuming." Id. Finally, counsel notes that it has been over two years since the filing of these complaints and that she was unaware until now she would "need to devote time to this matter and therefore, was unable to plan accordingly." Id.

Although this Office does not believe that the impending general election and pre-set vacation plans are necessarily appropriate grounds for an extension of time, we do recognize that the discovery requests in this matter are extensive and that locating documents from the previous election cycle may be time-consuming. This Office, however, does not believe that counsel requires a 90 day extension to respond. Previously in this matter, this Office recommended that the Commission approve a 64 day extension of time which had been requested by counsel for the Democratic Senatorial Campaign Committee ("DSCC"). As a matter of equity, the Office of the General Counsel recommends that the Commission also approve a 64 day extension of time for the Feinstein Committee. Accordingly,

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Page 2

the Feinstein Committee's response would be due on February 3, 1995. This Office intends to make clear to counsel that this extension is being granted for them to respond substantively to the discovery requests and that the Commission expects full and complete responses. This Office will also remind counsel that the time for filing a motion to quash has passed and that this extension does not extend the deadline for filing such a motion. Finally, we will advise them that further extensions will not be permitted.

**RECOMMENDATIONS**

1. Deny the requested extension of 90 days by the Feinstein for Senate Committee and Michael J. Barrett, as treasurer, and approve an extension of 64 days.
2. Approve the appropriate letter.

Attachment  
Request for Extension

Attorney assigned: Mary Ann Bumgarner

95043690365

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Feinstein for Senate Committee and  
Michael J. Barrett, as treasurer --  
Request for Extension of Time.

)  
) MUR 3620  
)  
)  
)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on November 15, 1994, the Commission decided by a vote of 6-0 to take the following actions in MUR 3620:

1. Deny the requested extension of 90 days by the Feinstein for Senate Committee and Michael J. Barrett, as treasurer, and approve an extension of 64 days.
2. Approve the appropriate letter, as recommended in the General Counsel's Memorandum dated November 9, 1994.

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

Attest:

11-15-94  
Date

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

Received in the Secretariat: Wed., Nov. 09, 1994 12:07 p.m.  
Circulated to the Commission: Wed., Nov. 09, 1994 4:00 p.m.  
Deadline for vote: Thurs., Nov. 15, 1994 4:00 p.m.

bjr

95043690306



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 17, 1994

Lynn Utrecht, Esquire  
Oldaker, Ryan & Leonard  
818 Connecticut Avenue, N.W.  
Suite 1100  
Washington, D.C. 20006

RE: MUR 3620  
Feinstein for Senate  
Committee and  
Michael J. Barrett, as  
treasurer

Dear Ms. Utrecht:

This is in response to your letter dated November 4, 1994, which we received on November 7, 1994, requesting a 90 day extension, until March 1, 1995, to respond to the Commission's reason to believe findings and Order to Submit Written Answers and Subpoena to Produce Documents. After considering the circumstances presented in your letter, the Commission has denied your request for an extension of 90 days. The Commission, however, approved an extension until February 3, 1995. Accordingly, your response is due by the close of business on February 3, 1995.

The Commission approved an extension in this matter for you to respond substantively to the discovery requests. The Commission expects full and complete responses to its Order and Subpoena. This Office reminds you that the time for filing a motion to quash has passed and that this extension does not extend the deadline for filing such a motion. Finally, further extensions will not be permitted in this matter.

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

Sincerely,

*Mary Ann Bumgarner*  
Mary Ann Bumgarner  
Attorney

95043690367

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

1440 NEW YORK AVENUE, N.W.  
WASHINGTON, D.C. 20005-2111

Nov 16 9 48 AM '94

FAX (202) 393-5760

DIRECTOR  
(202) 371-9087

(202) 371-7000

BOSTON  
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FRANKFURT  
HONG KONG  
LONDON  
MOSCOW  
PARIS  
PRAGUE  
SYDNEY  
TOKYO  
TORONTO

November 15, 1994

VIA FEDERAL EXPRESS

Mary Anne Bumgarner  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: MUR 3620 Abrams '92 Committee and Lawrence  
B. Bittenweiner, as Treasurer

Dear Ms. Bumgarner:

We are in receipt of your Reason to Believe findings and request for documents and written answers in the above referenced matter. The Abrams committee documents have been in storage as the campaign has been closed for some time. It will take time to retrieve and review those documents in storage and locate individual campaign aides who may be able to assist in locating specific information.

To accomplish this, we are requesting an extension of forty-five days. Thank you for your consideration of this request.

Sincerely,

  
Kenneth A. Gross

95043690363





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

Nov 21 12 55 PM '94

**SENSITIVE**

November 21, 1994

**MEMORANDUM**

TO: The Commission

FROM: Lawrence M. Noble  
General Counsel *[Signature]*

SUBJECT: MUR 3620 --  
Request for Extension of Time

By letter dated November 15, 1994, counsel for the Abrams Committee f/k/a Abrams '92 Committee and Lawrence B. Bittenweiser, as treasurer, ("Abrams Committee") requests an extension of 45 days, until January 4, 1995, in which to respond to the Commission's reason to believe findings and Order to Submit Written Answers and Subpoena to Produce Documents. Attachment 1. In his letter, counsel for the Abrams Committee explains that additional time is necessary because the Committee's documents have been in storage "as the campaign has been closed for some time." Id. According to counsel, "it will take time to retrieve and review those documents in storage and locate individual campaign aides who may be able to assist in locating specific information." Id.

Based on the foregoing and because other Respondents in this matter have been granted additional time in which to respond, the Office of the General Counsel recommends that the Commission grant the requested extension until January 4, 1995. This Office intends to make clear to counsel that this extension is being granted for them to respond substantively to the discovery requests and that the Commission expects full and complete responses. This Office will remind counsel that the time for filing a motion to quash has passed and that this extension does not extend the deadline for filing such a motion. Finally, we will advise them that further extensions will not be permitted.

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**RECOMMENDATIONS**

1. Grant the extension of time until January 4, 1995, to the Abrams Committee f/k/a Abrams '92 Committee and Lawrence B. Bittenweiser, as treasurer.
2. Approve the appropriate letter.

Attachment  
Request for Extension

Attorney assigned: Mary Ann Bumgarner

95043690370

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
Abrams Committee f/k/a Abrams '92 ) MUR 3620  
Committee and Lawrence B. )  
Buttenweiser, as treasurer--Request )  
for an Extension of Time. )

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on November 25, 1994, the Commission decided by a vote of 5-0 to take the following actions in MUR 3620:

1. Grant the extension of time until January 4, 1995, to the Abrams Committee f/k/a Abrams '92 Committee and Lawrence B. Buttenweiser, as treasurer.
2. Approve the appropriate letter, as recommended in the General Counsel's Memorandum dated November 21, 1994.

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

Attest:

11-25-94  
Date

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

Received in the Secretariat: Mon., Nov. 21, 1994 12:55 p.m.  
Circulated to the Commission: Mon., Nov. 21, 1994 4:00 p.m.  
Deadline for vote: Fri., Nov. 25, 1994 4:00 p.m.

bjr

9504369031



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 30, 1994

Kenneth A. Gross, Esquire  
Skadden, Arps, Slate, Meagher & Flom  
1440 New York Avenue, N.W.  
Washington, D.C. 20005-2111

RE: MUR 3620  
Abrams Committee f/k/a  
Abrams '92 Committee and  
Lawrence B. Battenweiser, as  
treasurer

Dear Mr. Gross:

This is in response to your letter dated November 15, 1994, which we received on November 16, 1994, requesting an extension of 45 days to respond to the Commission's reason to believe findings and Order to Submit Written Answers and Subpoena to Produce Documents. After considering the circumstances presented in your letter, the Commission has granted the requested extension. Accordingly, your response is due by the close of business on January 4, 1995.

The Commission approved an extension in this matter for you to respond substantively to the discovery requests. The Commission expects full and complete responses to its Order and Subpoena. This Office reminds you that the time for filing a motion to quash has passed and that this extension does not extend the deadline for filing such a motion. Finally, further extensions will not be permitted in this matter.

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

Sincerely,

Mary Ann Bumgarner  
Attorney

95043690312

**WALLACE, CREECH, SARDA & ZAYTOUN, L.L.P.**

JOHN R. WALLACE\*  
PAUL P. CREECH  
PETER J. SARDA  
ROBERT E. ZAYTOUN\*  
RICHARD P. NORDAN  
RICHARD T. FOUNTAIN, III  
PATRICIA L. WILSON MEDYNSKI

\*ALSO ADMITTED IN FLORIDA

ATTORNEYS AT LAW  
UGB PLAZA  
3605 GLENWOOD AVENUE, SUITE 390  
RALEIGH, NORTH CAROLINA 27612

MAILING  
P.O. BOX 19085  
RALEIGH, N.C. 27605  
(919) 788-9322

FAX  
(919) 788-8113

November 23, 1994

**VIA FACSIMILE  
ORIGINAL BY U.S. MAIL**

Mary Ann Bumgarner, Esq.  
Office of the General Counsel  
Federal Election Commission  
Washington, D.C. 20463

Re: MUR 3620

Dear Ms. Bumgarner:

As I have indicated to you by telephone the Sanford Committee is inactive, and campaign staff have dispersed such that additional time will be required in which to provide the Commission with responses to the Interrogatories and Request for Production of Documents previously served.

We respectfully request an extension of time for response and for as long a period as can be granted so that appropriate records can be retrieved, examined and responses prepared.

Please contact me if you have any questions with regard to this matter. I look forward to your response.

Sincerely,

WALLACE, CREECH, SARDA  
& ZAYTOUN, L.L.P.

John R. Wallace

JRW/tlf  
LTJW9219.003

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

Nov 28 10 05 AM '94

Nov 28 9 19 AM '94

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COMMISSION  
OFFICE OF GENERAL  
COUNSEL

95043690373



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

VIA FACSIMILE

November 28, 1994

John R. Wallace, Esquire  
Wallace, Creech, Sarda & Zaytoun  
P.O. Box 12065  
Raleigh, NC 27605

RE: MUR 3620  
Sanford for Senate Committee  
and Alton G. Buck, as  
treasurer

Dear Mr. Wallace:

This is in response to your letter dated November 23, 1994, which we received on that same date requesting an extension of time to respond to the Commission's reason to believe findings and Order to Submit Written Answers and Subpoena to Produce Documents. After considering the circumstances presented in your letter, this Office has granted a 20 day extension. Accordingly, your response is due by the close of business on December 14, 1994.

This Office approved an extension in this matter for you to respond substantively to the discovery requests. The Commission expects full and complete responses to its Order and Subpoena. This Office reminds you that the time for filing a motion to quash has passed and that this extension does not extend the deadline for filing such a motion. Finally, further extensions will not be permitted in this matter.

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

Sincerely,

A handwritten signature in cursive script that reads "Mary Ann Bumgarner".

Mary Ann Bumgarner  
Attorney

95043690374

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

1440 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20005-2111

FAX (202) 393-5760

(202) 371-7000

DIRECT DIAL  
(202) 371-7007

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TORONTO

January 6, 1995

VIA HAND DELIVERY

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

ATTN: Mary Ann Bumgarner, Esq.

Re: MUR 3620 - The Abrams Committee,  
f/k/a Abrams '92, and Lawrence B.  
Buttenweiser, as Treasurer

Dear Mr. Noble:

This is in response to the interrogatories and subpoena to produce documents attached to the letter, dated October 17, 1994, notifying Abrams '92 of the reason to believe finding by the Federal Election Commission.

The affidavit of Mary Beth Pearlberg, the Finance Director of Abrams '92, which is attached as Attachment 1 responds to the interrogatories. The documents attached as Attachment 2 respond to the request for production of documents. Those documents were ascertained pursuant to a diligent search through the documents within the control of Abrams '92.

As is evident from the attached material, although Abrams '92 participated in the DSCC's so-called tally program, Abrams '92 did not communicate to anyone that there was an arrangement or guarantee that any portion of the money raised by Abrams '92 for the DSCC would be used to benefit Abrams's campaign. Such contributions were not earmarked in any way for Abrams '92 under 11 C.F.R. § 110.6. Indeed, Abrams '92 strictly conformed to the specific terms of the tally program under which the DSCC had complete discretion and control

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WASHINGTON, D.C.



Lawrence M. Noble, Esq.  
January 6, 1995  
Page 2

as to how it would use money raised by the campaign. Abrams '92's fundraising efforts on behalf of the DSCC was only one of many factors considered by the DSCC in deciding how much money it would spend on Abrams '92. The other factors included 1) Abrams's chance of winning the election; 2) the closeness of the race; 3) the need for funds; and 4) the importance of the race. Given the importance of the New York race, the favorable standing of Abrams in the polls, and the closeness of the race, it is very likely the DSCC would have spent the maximum amount on Abrams '92 regardless of the campaign's ability to raise funds for itself or DSCC.

If additional information becomes available, we will supplement our response.

Respectfully submitted

  
Kenneth A. Gross

Attachments

95043690376

JUN 6 4 21 PM '95

RECEIVED  
FEDERAL BUREAU OF INVESTIGATION  
OFFICE OF THE DIRECTOR

# ATTACHMENT 1

RESPONSES TO INTERROGATORIES

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JAN 9 4 53 PM '95

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

FEDERAL ELECTION COMMISSION

-----X  
In the Matter of )  
 )  
The Abrams Committee, )  
f/k/a Abrams '92, )  
and Lawrence B. Battenweiser, )  
as Treasurer )  
-----X

MUR 3620

AFFIDAVIT OF MARY BETH PEARLBERG

I, MARY BETH PEARLBERG, do depose and say that:

- I. I was the Finance Director of Abrams '92 from January 1, 1992 through the 1992 general election. From the inception of the campaign to January 1, 1992, I was the Deputy Finance Director of Abrams '92.
- II. As Finance Director of Abrams '92, I conducted or supervised the raising of campaign contributions by Abrams '92.
- III. The answers, to the best of my knowledge after exercising due diligence, to the following interrogatories are as follows:
  - 1. Please describe in full and complete detail when and how the DSCC informed the Abrams campaign of the DSCC's tally sheet program.

The DSCC conducted a seminar in the Washington, D.C. area for all Democratic challengers around the country. At that seminar, several topics were discussed including fundraising. Although I did not attend that seminar, Pam Lippe, another Abrams '92 staff member who did attend, informed me that the tally program had been discussed at the seminar. On the day of the primary election, Steve Richetti, an official of the DSCC, met with John Burke, the Deputy Campaign Manager, and me to discuss how the DSCC could be helpful to the campaign if it

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wins the primary. Also, on the day after the primary election, Bob Hickmott, another official of the DSCC, met with Scott Gayle, the Fundraising Consultant, and me. Mr. Hickmott informed us of various ways in which the DSCC could be helpful to the campaign now that it had won the primary.

Mr. Hickmott also told us that the DSCC could spend up to \$1.4 million on Abrams '92 and that the DSCC needed help in raising money. He asked if Abrams '92 would raise money for the DSCC from Abrams supporters. Although the amount of funds raised by Abrams '92 for the DSCC could impact on the amount that the DSCC spends on Abrams '92, Mr. Hickmott specifically explained that this was not an earmarking program.

Because of the importance of the race in New York and our favorable standing in the polls indicating that it was going to be a close race, I believe that the DSCC would have spent the maximum amount on the Abrams campaign regardless of the campaign's ability to raise funds on behalf of itself or DSCC.

2. **Please describe when and how the DSCC recruited or encouraged the Abrams campaign to participate in the tally sheet program (e.g., telephone calls, written solicitations, etc.).**

Abrams '92 was not recruited to participate in the tally program. Rather, the campaign's decision to participate in the tally program was made after the meeting that took place with Bob Hickmott on the day after the primary election as described in the response to interrogatory number 1.

- 95043620300
3. Please state whether the DSCC offered, explicitly or impliedly, any incentive for participating in the tally sheet program to the Abrams campaign.

Mr. Hickmott made it clear that there was no dollar for dollar agreement regarding funds raised by the Abrams campaign on behalf of DSCC and that such fundraising efforts by the campaign was only one of many factors that influence the DSCC's decision as to the amount of money to be spent on the campaign. He informed me that the other factors are 1) Abrams's chance of winning the election; 2) the closeness of the race; 3) the need for funds; and 4) the importance of the race.

4. If the answer to interrogatory number 3 is in the affirmative:

- (a) Please describe in full and complete detail each such incentive;
- (b) Please identify each and every person to whom the incentive(s) was offered or communicated;
- (c) Please describe how and when the DSCC communicated the incentive(s) to each of the persons identified in response to interrogatory 4(b).

See responses to interrogatories number 1, 2, and 3.

5. Did the DSCC draft, prepare, supply, or otherwise participate in the production of any solicitation issued by the Abrams campaign that referred to the tally program?

I do not recall DSCC participating in the production or preparation of any solicitation issued by the Abrams campaign.

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6. If the answer to interrogatory number 5 is in the affirmative:

- (a) Please identify and produce a copy of each such solicitation and/or draft solicitation provided by the DSCC;
- (b) For each such solicitation, identify each and every person who was involved in drafting or preparing the solicitation and describe the nature of each person's involvement.

Not applicable.

7. Please state whether the Abrams campaign sent different solicitations to contributors who had contributed the statutory maximum to the Abrams campaign and to contributors who had not. If so, please describe in full and complete detail how or in what ways they differed.

To the best of my knowledge, Abrams '92 did not send different solicitations to contributors who had contributed the statutory maximum to the Abrams campaign.

8. If the answer to interrogatory number 7 is in the affirmative, please identify and produce a copy of each solicitation sent to those contributors who had contributed the statutory maximum to the Abrams campaign.

Not applicable.

9. Please state the date and amount of contributions to the DSCC that were tallied for the Abrams campaign.

See documents attached in response to request number 2 in Attachment 2.



- 9 5 0 4 3 6 9 0 3 8 2
10. Please describe, in full and complete detail, how the Abrams campaign recorded, memorialized, or otherwise kept records of the amount of contributions to the DSCC that were tallied for the Abrams campaign, and please provide a copy of all documents recording or memorializing the amount of tallied contributions.

The only memorialization available of such contributions are information sheets generated and sent by the DSCC to Abrams '92 listing contributions made to DSCC that were tallied to Abrams '92. See response to interrogatory number 9.

In some instances, I received checks directly made out to the DSCC. I recorded those checks and immediately forwarded those checks to the DSCC. However, after a thorough search, those records could not be located.

11. Please describe, in full and complete detail, how the DSCC advised the Abrams campaign of the amount of contributions to the DSCC that were tallied for the Abrams campaign.

The DSCC sent lists to the Abrams campaign listing contributions made to DSCC that were tallied to the Abrams campaign. See responses to interrogatories number 9 and 10.

12. Please describe, in full and complete detail, what the Abrams campaign communicated to potential contributors about the DSCC's "tally sheet program" or the option of "tallying" a contribution to the DSCC for the Abrams campaign, and the method(s) by which that information was communicated.

Information regarding contributions to the DSCC was communicated to contributors orally and in writing. The written communication was in the form of a solicitation which contained various options for contributors including an option to

contribute to the DSCC. The solicitation also informed contributors that the DSCC could spend up to \$1.4 million on the Abrams campaign. This solicitation is attached in response to request number 1 in Attachment 2.

13. Please state whether you contend that tallied contributions are not earmarked contributions, as defined and regulated by 2 U.S.C. § 441a(a)(8); and the governing regulations. If you so contend:
- a. Please state and describe in full and complete detail each and every fact which supports this contention.
  - b. Please identify and produce each and every document which you contend supports this contention.

I am not a lawyer and cannot express a legal opinion as to what constitutes earmarking under the Federal Election Campaign Act. However, the Abrams campaign raised funds for the DSCC strictly in accordance with what I understood to be the DSCC's so-called tally program which was not based on any agreement or guarantee that the Abrams campaign would receive the contributions it raised for the DSCC. In fact, Abrams '92 never informed anyone orally or in writing that there was any arrangement or guarantee that any portion of their contribution to the DSCC would be used to benefit the Abrams campaign. Rather, the DSCC had complete discretion and control over how it would use the funds received from the contributors. In deciding how much money a campaign would receive

from the DSCC, the DSCC used a variety of factors such as 1) Abrams's chance of winning the election; 2) the closeness of the race; 3) the need for funds; 4) the importance of the race; and 5) the campaign's fundraising efforts on behalf of the DSCC.

*Mary Beth Pearlberg*  
MARY BETH PEARLBERG

Sworn to before me this 6th day  
of January, 1995.

*Richard Searer*  
\_\_\_\_\_  
Notary Public

**RICHARD SNEARER**  
Notary Public, State of New York  
No. 018H5036446  
Qualified in Westchester County  
Commission Expires Nov. 28, 1996

# **ATTACHMENT 2**

**RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS**

95043690335

1. Please provide a copy of each and every version of every solicitation, mailing, or other document that the Abrams campaign sent to potential contributors in connection with the 1992 general election campaign which refers to the tally program or which discusses or describes the option of tallying a contribution for the Abrams campaign's tally account.

Attached are solicitations with a menu informing the contributor that the campaign is primarily interested in raising funds for itself but also about the option of making a contribution to the DSCC. Also attached is a memorandum from the Abrams campaign to a PAC.

95043690386

**ABRAMS '92**  
Headquarters: 130 East 40th Street • 10th Floor • New York, NY 10016

TEL 212 677-1200 • FAX 212 610-8012

September 22, 1992

Lilly Fallah Lawrence  
The Waldorf Towers  
100 East 90th Street  
New York, NY 10022

Dear Lilly:

The battle is joined!

Because of the support of tens of thousands of people across this country, I was able to win the primary by getting my message out to the voters of New York on radio and television.

Now, in a tough fight against a well-financed incumbent, I must raise an additional \$4 million over the next few weeks in order to respond to Senator D'Amato's barrage of negative TV commercials. I am counting on you to help me pull it off.

Your commitment for you and Bunty to raise between \$20,000 and \$50,000 for this effort to defeat Alfonse D'Amato will be one of the building blocks of my campaign. As the nominee of my party, I will be the beneficiary of several coordinated efforts that will help offset my campaign expenses. I have enclosed a memo outlining the different ways in which an individual can give money to a U.S. Senate race.

My finance director Mary Beth Pearlberg will contact you to follow up on our conversation. Your continued support and generosity will be critical to my victory in November.

Once again, many thanks for your support.

Sincerely,



Robert Abrams

*You and Bunty are terrific!*

95043690367



**ABRAMS '92**  
Headquarters: 120 East 66th Street • 10th Floor • New York, NY 10021

TEL 212 672-1340 • FAX 212 680-1340

October 2, 1992

Bruce Slovin  
Mac Andrews & Forbes Group, Inc.  
767 Fifth Avenue, 49th Floor  
New York, NY 10153-0033

Dear Bruce:

It was great seeing you at the Clinton dinner the other night.

Because of the support of tens of thousands of people across this country, I was able to win the primary by getting my message out to the voters of New York on radio and television.

Now, in a tough fight against a well-financed incumbent, I must raise an additional \$4 million over the next few weeks in order to respond to Senator D'Amato's barrage of negative TV commercials. I am counting on you to help me pull it off.

If you could make a \$2,000 contribution to Abrams '92 and a \$10,000 contribution to the DSCC for this effort to defeat Alfonse D'Amato, it would be one of the building blocks of my campaign. For your information I have enclosed a memo outlining the different ways in which an individual can give money to a U.S. Senate race.

My finance director Mary Beth Pearlberg will contact you to follow up on our conversation. Your continued support and generosity will be critical to my victory in November.

Once again, many thanks for your support.

Sincerely,

*Robert Abrams*  
Robert Abrams

*I need your help!*



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**ABRAMS '92**  
Headquarters: 130 East 42nd Street - 10th Floor - New York, NY 10017  
TEL 212 610-1000 FAX 212 610-1010

October 5, 1992

Robert F. Weis  
Weis Markets, Inc.  
1000 South 2nd Street  
Sunbury, PA 17801

Dear Bob:

The battle is joined!

Because of the support of tens of thousands of people across this country, I was able to win the primary by getting my message out to the voters of New York on radio and television.

Now, in a tough fight against a well-financed incumbent, I must raise an additional \$4 million over the next few weeks in order to respond to Senator D'Amato's barrage of negative TV commercials. I am counting on you to help me pull it off.

I appreciate your willingness to consider a contribution to the DSCC. If you could tally \$5,000-\$10,000 for this effort to defeat Alfonse D'Amato, it would be one of the building blocks of my campaign. I have enclosed a memo outlining the different ways in which an individual can give money to a U.S. Senate race.

My finance director Mary Beth Pearlberg will contact you to follow up on our conversation. Your continued support and generosity will be critical to my victory in November.

Once again, many thanks for your support.

Sincerely,

*Bob*  
Robert Abrams

*Thanks for your help!*



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**ABRAMS '92**

Headquarters: 132 East 48th Street - 14th Floor - New York, NY 10016  
TEL 212 622-1234 FAX 212 619-0570

September 30, 1992

Joseph W. Aidlin  
5143 Sunset Boulevard  
Los Angeles, CA 90027

Dear Joe:

The battle is joined!

Because of the support of tens of thousands of people across this country, I was able to win the primary by getting my message out to the voters of New York on radio and television.

Now, in a tough fight against a well financed incumbent, I must raise an additional \$4 million over the next few weeks in order to respond to Senator D'Amato's barrage of negative TV commercials. I am counting on you to help me pull it off.

If you and Mary have any room to make additional federal contributions, I would be grateful if you could tally money to the DSCC for this effort to defeat Alfonse D'Amato. As you may know, an individual can give up to \$20,000 annually to the DSCC. Additional federal giving limits are outlined in the memo I have enclosed.

My finance director Mary Beth Pearlberg will contact you to follow up on our conversation. Your continued support and generosity will be critical to my victory in November.

Once again, many thanks for your support.

Sincerely,

*Bob*  
Robert Abrams

It was great to chat with you again. Your friendship and stalwart support over these many years has been very meaningful to me. Thanks for your willingness to be of help again! Best regards.



Printed on Recycled Paper

**ABRAMS '92**

Headquarters: 130 East 40th Street - 10th Floor - New York, NY 10018

TEL 212 678-1000 FAX 212 618-0010

997-8400

October 8, 1992

Mr. Leon Hess  
Anereda Hess  
1185 Avenue of the Americas  
New York, NY 10036

Dear Leon:

I wanted to thank you for your commitment to raise additional funds for my Senate campaign. Your early support was a big boost to my primary effort, and with your help we are going to win this campaign and restore real leadership and representation to New York's junior Senate seat. In fact, just this week, the Marist poll showed me with a six point lead.


However, D'Amato has a huge war chest -- over \$5 million on hand. I need to raise a lot of money between now and election day if I'm going to be confident of winning.

I have enclosed ten response cards, as you requested. In addition, now that I am the nominee of the party, I am eligible to receive contributions from the Democratic Senatorial Campaign Committee. Individuals can contribute up to \$20,000 to the DSCC. I have enclosed an information sheet for you to look at. It would be a big help to me if you could make a substantial contribution to the DSCC.

Thanks, as always, for your support. I hope we can speak further about the campaign in the next few weeks.

With warmest wishes for a happy New Year.

Sincerely,



Robert Abrams

**ABRAMS '92**  
Independent 130 East 42nd Street - 10017 New York, NY 10017

September 17, 1992

Morton Hyman  
Overseas Shipholding Group Inc.  
511 Fifth Avenue  
New York, NY 10017

Dear Mort:

The battle is joined!

Because of the support of tens of thousands of people across this country, I was able to win the primary by getting my message out to the voters of New York on radio and television.

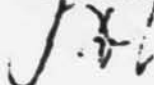
Now, in a tough fight against a well-financed incumbent, I must raise an additional \$4 million over the next few weeks in order to respond to Senator D'Amato's barrage of negative TV commercials. I am counting on you to help me pull it off.

Your commitment to raise and tally to the DSCC a total of \$50,000 for this effort to defeat Alfonse D'Amato will be one of the building blocks of my campaign. As the nominee of my party, I will be the beneficiary of several coordinated efforts that will help offset my campaign expenses. I have enclosed a memo outlining the different ways in which an individual can give money to a U.S. Senate race.

Michael Laskawy from my campaign staff will contact you to follow up on our conversation. Your continued support and generosity will be critical to my victory in November.

Once again, many thanks for your support.

Sincerely,



Robert Abrams

*You are a generous supporter  
and loyal friend!*

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# BOB ABRAMS FOR U.S. SENATE

## Donation Priorities for the Abrams Victory Effort

There are several campaign committees which will benefit Bob Abrams in his effort to defeat Senator D'Amato and to insure a Democratic victory in November. They are listed below in order of priority for this effort.

### ■ FEDERAL CAMPAIGN COMMITTEES:

Donations to the two Federal campaign committees mentioned below are our highest priority, because there are fewer restrictions on how these funds can be used. Individuals have an overall limit of \$25,000 per calendar year to Federal campaigns (including Congressional, Senate, and Presidential campaigns and the Federal committees of national, state, and local political parties).

#### ■ ABRAMS '92:

Abrams '92 is the official Federal campaign committee for Bob Abrams -- it is the highest priority for donations, since these funds can be used directly by the campaign for television air time and other media expenditures, the most important and expensive items in the campaign budget.

As a U.S. Senate campaign, Abrams '92 is governed by the Federal Election Commission limits on contributions: Individuals and partnerships may give up to \$2,000 total (with \$1,000 allocated to primary debt reduction and \$1,000 allocated to the general election). Corporate contributions to Abrams '92 are prohibited.

#### ■ DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE (DSCC):

The DSCC is a national Federal committee with the goal of electing Democrats to the U.S. Senate. Under Federal law, the DSCC can allocate up to \$1.4 million to a New York Senate campaign, which can pay the expenses of the Abrams '92 campaign. They have requested help from the Abrams campaign to raise funds for the DSCC so that it may help elect Democratic Senate candidates in New York and around the country.

Individuals and partnerships may give up to \$20,000 annually to the DSCC. Corporate contributions to the DSCC are prohibited.

### ■ NON-FEDERAL COMMITTEES:

Non-Federal dollars are used in connection with state and local activities which benefit the entire Democratic ticket. Donors who cannot contribute to Federal committees (either because they have reached their personal Federal limit for 1992 or because of the prohibition on corporate contributions) may give to the New York State Democratic Coordinated Campaign.

Checks should be made payable to New York Victory Fund '92 -- Non-Federal Account. Individuals may contribute up to \$150,000 and each corporate entity may contribute up to \$5,000 per calendar year in the aggregate to all New York state and local candidates and committees.

Contributions are not deductible for Federal income tax purposes. Paid for by Abrams '92.

95043690393



## Rob Abrams for U.S. Senate

**Yes, I will support Bob Abrams!**

Enclosed is my contribution of \_\_\_\_\_.

### HOW TO WRITE YOUR CHECK:

- Individuals may contribute up to \$2,000 to Abrams '92 (\$1,000 for primary debt reduction and \$1,000 for the general election). Please make checks payable to "Abrams '92."
- For individuals who have already given the \$2,000 maximum to Abrams '92, checks should be made payable to "D.S.C.C."
- The Democratic Senatorial Campaign Committee ("DSCC") is a national committee with the goal of electing Democrats to the U.S. Senate. Under Federal Law, the DSCC can allocate up to \$1.4 million to a campaign for the U.S. Senate in New York, which can help pay the expenses of the Abrams campaign.
- Please call (212) 972-1340 with any questions.

Paid for by the Abrams '92 committee  
Please fill out required information on the reverse side.

95043690394

ABRAMS '92  
MEMORANDUM

TO: Jay Mazur, Evy Dubrow

FROM: Mary Beth Pearlberg

RE: \$1500 Balance on ILGWU PAC Contribution

=====

To follow-up on your conversation with Bob Abrams, the following provides the PAC contributions received to-date from the ILGWU to Abrams '92.

2/11/92	\$2,000
5/24/91	\$3,000
3/19/92	\$2,500
TOTAL	\$8,500
BALANCE	\$1,500

Additionally, please check with the DSCC to see if you can tally part/or all of your \$15,000 contribution to the New York race.

Please call me with questions.

95043690395

2. Please provide a copy of each and every version of every memorandum, letter, or other document that the DSCC sent to the Abrams campaign explaining and/or concerning the tally sheet program.

Attached is a list sent by the DSCC to Abrams '92 listing contributors to the DSCC who were tallied to the Abrams campaign.

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3. Please provide a copy of all documents pertaining to the tally sheet program, including, but not limited to:

- a. any and all agreements between the DSCC and the Abrams campaign;

None.

- b. correspondence between the DSCC and the Abrams campaign;

See response to request number 2.

- c. documents from the DSCC advising the Abrams campaign of the amount of contributions to the DSCC tallied for the Abrams campaign;

See response to request number 2.

- d. telephone memoranda and/or other written memoranda pertaining to the tally program and/or its implementation;

Attached is a letter from Riegle for Senate Committee to DSCC re-assigning \$10,000 from the Riegle tally account to the Abrams tally account.

- e. letters or sample letters soliciting tallied contributions;

See response to request number 1.

- f. other documents or sample documents soliciting tallied contributions;

None.

- g. telephone scripts for calls to contributors; and

None.

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h. thank-you letters or sample thank-you  
letters sent to contributors.

None.

95043690398

10/19/92 03:05PM FROM SEN RIEGLE DC

TO 3/1/21281895

P002/002

## Riegle for Senate Committee

October 19, 1992

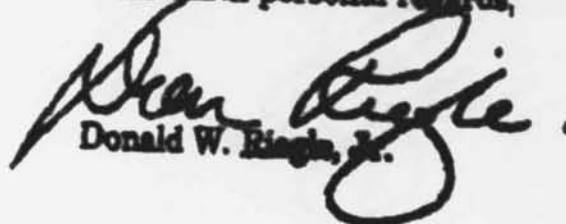
The Honorable Charles S. Robb  
Democratic Senatorial Campaign Committee  
430 South Capitol Street, S.E.  
Washington, DC 20003

Dear Chuck:

I am writing to request that the DSCC re-assign \$10,000 from my tally account to the tally account of Bob Abrams.

Thank you in advance for your assistance in this matter. The support of the DSCC continues to be invaluable to those Democrats facing a tough election in November.

With warm personal regards,

  
Donald W. Riegle, Jr.

cc: Bob Abrams  
Bob Whitcomb, DSCC

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- 95043690400
4. Please provide a copy of each and every document the DSCC sent to the Abrams campaign relating to the amount of coordinated party expenditures the DSCC had spent or had determined to spend on behalf of the Abrams campaign.

Although Mary Beth Pearlberg believes that there might have once been documents regarding these expenditures, we were unable to locate those documents after a thorough search of the records.

5. Please provide a copy of all documents prepared by the Abrams campaign relating to or discussing the amount of coordinated party expenditures to be spent by the DSCC on behalf of the Abrams campaign.

See response to request number 4.

WALLACE, GREECH, SARDA & ZAYTOUN, L.L.P.

JOHN R. WALLACE\*  
PAUL P. GREECH  
PETER J. SARDA  
ROBERT E. ZAYTOUN\*  
RICHARD P. NORDAN  
RICHARD T. FOUNTAIN, III  
PATRICIA L. WILSON MEDYNSKI

\*ALSO ADMITTED IN FLORIDA

ATTORNEYS AT LAW  
UCB PLAZA  
3605 GLENWOOD AVENUE, SUITE 300  
RALEIGH, NORTH CAROLINA 27612

MAILING:  
P.O. BOX 12085  
RALEIGH, N.C. 27605  
(919) 782-8322

FAX  
(919) 782-8113

January 18, 1995

Mary Ann Bumgardner, Esq.  
Office of General Counsel  
Federal Election Commission  
Washington, D.C. 20463

RE: MUR 6320-3620  
Terry Sanford for Senate Committee and Alton  
Buck, as Treasurer

Dear Ms. Bumgardner:

I enclose unverified responses to the Interrogatories and Requests for Documents served upon the Sanford for Senate Committee. If we are able to acquire additional information or locate documents, we will be pleased to supplement our responses.

As you will observe, these responses are abbreviated by virtue of our lack of information regarding the requested matters.

Senator Sanford experienced severe health problems during the course of the 1992 campaign commencing in or about June of that year and culminating in surgery during the course of the fall, which surgery effectively removed him from campaign management. Therefore, his knowledge and recollection of the events and communication is negligible.

The Treasurer, Alton G. Buck, is a retired accountant from Fayetteville in Cumberland County, North Carolina. He is apparently in poor health and now resides on the North Carolina coast. During the course of the campaign Mr. Buck maintained the treasury books and records of receipts and disbursements, but had no actual involvement in the management of the campaign. In particular, Mr. Buck had no involvement whatsoever in fund raising activities. Therefore, Mr. Buck's records do not enable us to respond to the interrogatories and requests for production of documents.

JAN 20 12 32 PM '95

FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL

95043690401

Mary Ann Bumgardner, Esq.  
January 18, 1995  
Page Two

The campaign was managed from an office in Raleigh, North Carolina by a staff assembled from Washington and across the state. Persons associated with the campaign are, of course, now employed elsewhere and there does appear to be any central repository of records. I am endeavoring to obtain what information may be located.

As you are aware, Senator Sanford is not actively engaged in political activity and maintains no campaign organization whatsoever. It would appear, therefore, that the information which you seek is most readily available from the Democratic Senatorial Campaign Committee and its records.

I will advise you as these matter develop. Thank you for your kind assistance in this regard.

Sincerely,

WALLACE, CREECH, SARDA  
& ZAYTOUN, L.L.P.

  
John R. Wallace

JRW/pjd  
LPJW9219.003  
Enclosure  
cc: The Honorable Terry Sanford

95043690402

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of: )  
The Sanford for Senate Committee ) MUR 3620  
and Alton G. Buck, as treasurer )

RESPONSE TO INTERROGATORIES  
AND REQUESTS FOR DOCUMENTS

1. Please describe in full and complete detail when and how the DSCC informed the Sanford campaign of the DSCC's tally sheet program.

RESPONSE:

The Respondents are without knowledge or information with respect to the matters addressed in Interrogatory 1.

2. Please describe when and how the DSCC recruited or encouraged the Sanford campaign to participate in the tally sheet program (e.g., telephone calls, written solicitations, etc.)

RESPONSE:

The Respondents are without knowledge or information with respect to the matters addressed in Interrogatory 2.

3. Please state whether the DSCC offered, explicitly or impliedly, any incentive for participating in the tally sheet program to the Sanford campaign.

RESPONSE:

The Respondents are without knowledge or information with respect to the matters addressed in Interrogatory 3.

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4. If the answer to interrogatory number 3 is in the affirmative:

a. Please describe in full and complete detail each such incentive;

b. Please identify each and every person to whom the incentive(s) was offered or communicated;

c. Please describe how and when the DSCC communicated the incentive(s) to each of the persons identified in response to interrogatory number 4(b).

**RESPONSE:**

Not Applicable.

5. With regard to the solicitation entitled "Terry Sanford's Campaign for U.S. Senate" attached as Exhibit 5 to the complaint in MUR 3620 (the "Solicitation"), please provide the following information:

a. Please identify all persons who were involved and/or who had responsibility, including supervisory responsibility, for writing, producing and/or distributing the solicitation and please specify each person's role.

b. Please state the total number of solicitations mailed or otherwise distributed; what was the source of the distribution list?

c. Of those solicited, how many persons had given the maximum limit to the Sanford campaign?

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d. Please describe in full and complete detail how the Sanford campaign determined to whom the solicitation would be mailed or otherwise distributed. Was a person's status as a "maxed out" contributor to the Sanford campaign a factor in being included on the distribution list?

e. Please state whether the Sanford campaign produced and distributed more than one version of the solicitation. If so, identify and produce a copy of each.

f. Identify and produce a copy of all documents that accompanied the solicitation.

g. Please state the total number of tallied contributions made in response to the solicitation, the amount of each such tallied contribution and the identity of each contributor who made a tallied contribution in response to the solicitation.

h. Please state the total number of non-tallied contributions made in response to the solicitation, the amount of each such non-tallied contribution and the identity of each contributor who made a non-tallied contribution in response to the solicitation.

**RESPONSE:**

The Respondents are without knowledge or information with respect to the matters addressed in Interrogatory 5.

6. (Omitted)

**RESPONSE:**

Not Applicable.



7. Did the DSCC draft, prepare, supply or otherwise participate in the production of any solicitation issued by the Sanford campaign that referred to the tally program?

**RESPONSE:**

The Respondents are without knowledge or information with respect to the matters addressed in Interrogatory 7.

8. If the answer to interrogatory number 7 is in the affirmative:

a. Please identify and produce a copy of each such solicitation and/or draft solicitation provided by the DSCC;

b. For each such solicitation, identify each and every person who was involved in drafting or preparing the solicitation and describe the nature of each person's involvement.

**RESPONSE:**

The Respondents are without knowledge or information with respect to the matters addressed in Interrogatory 8.

9. Please state whether the Sanford campaign sent different solicitations to contributors who had contributed the statutory maximum to the Sanford campaign and to contributors who had not. If so, please describe in full and complete detail how or in what ways they differed.

**RESPONSE:**

Not Applicable.

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10. If the answer to interrogatory number 9 is in the affirmative, please identify and produce a copy of each solicitation sent to those contributors who had contributed the statutory maximum to the Sanford campaign.

**RESPONSE:**

The Respondents are without knowledge or information with respect to the matters addressed in Interrogatory 10.

11. Please state the date and amount of contributions made to the DSCC that were tallied for the Sanford campaign.

**RESPONSE:**

Not Applicable.

12. Please describe, in full and complete detail, how the Sanford campaign recorded, memorialized, or otherwise kept records for the Sanford campaign, and please provide a copy of any documents on which such records were kept.

**RESPONSE:**

The Respondents are without knowledge or information with respect to the matters addressed in Interrogatory 12.

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13. Please describe, in full and complete detail, how the DSCC advised the Sanford campaign of the amount of contributions to the DSCC that were tallied for the Sanford campaign.

**RESPONSE:**

The Respondents assume that the records as to which description is sought in Interrogatory 12 relate to the "tally sheet" activities addressed in the Complaint and the Respondents are without knowledge or information with regard to such matters.

14. Please describe, in full and complete detail, what the Sanford campaign communicated to the potential contributors about the DSCC's "tally sheet program" or the option of "tallying" a contribution to the DSCC for the Sanford campaign, and the method(s) by which that information was communicated.

**RESPONSE:**

The Respondents are without knowledge or information with respect to the matters addressed in Interrogatory 14.

15. Please state whether you contend that tallied contributions are not earmarked contributions, as defined and regulated by 2 U.S.C. § 441a(a)(8) and the governing regulations. If you so contend:

a. Please state and describe in full and complete detail each and every fact which supports this contention.

b. Please identify and produce each and every document which you contend supports this contention.

**RESPONSE:**

The Respondents are without knowledge or information with respect to the matters addressed in Interrogatory 14.

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. Please provide a copy of each and every version of every solicitation, mailing or other document that the Sanford campaign sent to potential contributors in connection with the 1992 general election campaign which refers to the tally program or which discusses or describes the option of tallying a contribution for the Sanford campaign's tally account.

**RESPONSE:**

The Respondents do not physically possess, nor do they have knowledge of the location of the documents sought in Request 1.

2. Please provide a copy of each and every version of every memorandum, letter or other document that the DSCC sent to the Sanford campaign explaining and/or concerning the tally sheet program.

**RESPONSE:**

The Respondents do not physically possess, nor do they have knowledge of the location of the documents sought in Request 2.

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3. Please provide a copy of all documents pertaining to the tally sheet program, including, but not limited to:

a. any and all agreements between the DSCC and the Sanford campaign;

b. correspondence between the DSCC and the Sanford campaign;

c. documents from the DSCC advising the Sanford campaign of the amount of contributions to the DSCC tallied for the Sanford campaign;

d. telephone memoranda and/or other written memoranda pertaining to the tally program or its implementation;

e. letters or sample letters soliciting tallied contributions;

f. other documents or sample documents soliciting tallied contributions;

g. telephone scripts for calls to contributors; and

h. thank-you letters or sample thank-you letters sent to contributors.

**RESPONSE:**

The Respondents do not physically possess, nor do they have knowledge of the location of the documents sought in Request 3.

4. Please provide a copy of each and every document the DSCC sent to the Sanford campaign relating to the amount of coordinated party expenditures the DSCC had spent or had determined to spend on behalf of the Sanford campaign.

**RESPONSE:**

The Respondents do not physically possess, nor do they have knowledge of the location of the documents sought in Request 4.

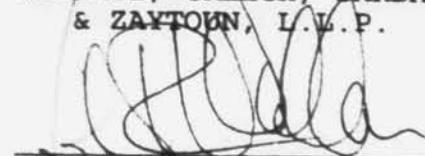
5. Please provide a copy of all documents prepared by the Sanford campaign relating to or discussing the amount of coordinated party expenditures to be sent by the DSCC on behalf of the Sanford campaign.

**RESPONSE:**

The Respondents do not physically possess, nor do they have knowledge of the location of the documents sought in Request 5.

This the 18th day of January, 1995.

WALLACE, CREECH, SARDA  
& ZAYTOON, L.L.P.



John R. Wallace  
Attorneys for Respondents  
Post Office Box 12065  
Raleigh, North Carolina 27605  
Telephone: (919) 782-9322



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **RESPONSE TO INTERROGATORIES AND REQUESTS FOR DOCUMENTS** was served upon the opposing party by depositing a copy of same in the United States Mail, postage prepaid to:

Mary Ann Bumgardner, Esq.  
Office of General Counsel  
Federal Election Commission  
Washington, D.C. 20463

This the 18th day of January, 1995.

WALLACE, CREECH, SARDA  
& LAYTON, L.L.P.



John R. Wallace

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# PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011  
(202) 628-6600 • FACSIMILE (202) 434-1690

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

JAN 23 5 19 PM '95

ROBERT F. BAUER  
(202) 434-1602

January 23, 1995

## Via Messenger

Lawrence M. Noble, Esquire  
General Counsel  
Federal Election Commission  
999 E Street, N.W., Sixth Floor  
Washington, D.C. 20463

Re: MUR 3620

Dear Mr. Noble:

Enclosed are (1) the Response of the DSCC to the Order of the Federal Election Commission to Submit Written Answers in answer to the Order to Submit Written Answers and (2) documents produced in response to the Subpoena to Produce Documents bearing on issues raised in various complaints over the DSCC "tally" program.

The Committee has attempted, over a period including the General Election of 1994 and a change in Administration, to obtain the information called for by the Order and Subpoena. The Committee acknowledges its continuing obligation to identify and provide to the Commission additional information which may be located or become available, and it will supplement this submission with additional information which may still be located no later than February 10, 1995.

The Committee may also wish to provide supplemental legal analysis once it has completed any final submission to the Commission.

Very truly yours,



Robert F. Bauer

RFB:dkg  
Enclosures

[04005-0048/DA950230 071]

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

MUR 3620

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF THE  
CLERK  
JUN 27 5 22 PM '95

**RESPONSE OF THE DSCC TO THE ORDER OF THE  
FEDERAL ELECTION COMMISSION TO SUBMIT WRITTEN ANSWERS**

**Interrogatory No. 1. Please describe, in full and complete detail, the DSCC's tally sheet program.**

Answer to Interrogatory No. 1 The tally program, also known as the tally option, relates to one of the criteria relied upon by the DSCC in making coordinated expenditures to candidates in general elections pursuant to Section 441a(d). The program offers candidates and contributors an opportunity to credit candidates for contributions that they raise, or that their supporters make, for DSCC activities. A contribution credited to a candidate is "tallied" to that candidate (the terms "credit" and "tally" are essentially synonymous for purposes of this program). When making allocations of available 441a(d) funding, DSCC takes into account, along with other factors, the total number of contributions "tallied" to a candidate. The importance to a candidate of amounts "tallied" to his or her name lies not in any individual contribution, but in the total amount of such contributions. Other factors which bear on the allocation decisions made by the Committee are the financial need of a candidate and the "winability" or prospects of success of his or her campaign.

An allocation for these purposes is a commitment by the Committee to expend certain sums for the benefit of a candidate under section 441a(d). The actual expenditure of the funds

might, in many instances, follow later pursuant to the statutory requirement that such expenditures may only be made in connection with a general election campaign

**Interrogatory No. 2. Please state the purpose(s) of the tally sheet program.**

Answer to Interrogatory No. 2 The purpose of the tally program is to encourage candidates and their supporters to raise funds for DSCC activities, including but not limited to its program of coordinated expenditures in general elections. Because DSCC finances depend upon active fundraising efforts by all of its candidates who benefit from Committee programs, the tally program is intended to focus candidates on the importance of their fundraising in developing the resources necessary to support the Committee's nationwide activities in Senate elections. Tally credit operates as an incentive to candidates and supporters in this fundraising by emphasizing a relation between their overall efforts on behalf of the Committee and the Committee's, in turn, on their behalf.

**Interrogatory No. 3. Identify all persons who had responsibility, including supervisory responsibility, for creating, approving, implementing and/or operating the DSCC's tally sheet program.**

Answer to Interrogatory No. 3 DSCC has operated the tally program in one form or another since the 1982 election cycle. Numerous senior staff over the years have been involved in reviewing and adjusting the procedures and related requirements for administration of the tally program. Review and approval of the legal requirements for the tally program have been the responsibility throughout this period of the Committee General Counsel, Robert F. Bauer. In the 1992 election cycle, the individuals in the senior staff with principal supervisory and day-to-day responsibility for the administration of tally program activities were Executive Director Steven Richetti, Deputy Director Robert Hickmott, Political Director Donald Foley, Director of the Majority Trust Program in the Finance Division Stephanie Cooper, Comptroller Thomas Lehner, Finance Division Coordinator Laura

Young, Assistant to the Executive Director Margaret Sherry, Director of the Leadership Circle Program Tracy Buckman, and Deputy Comptrollers Debra Davis and Darlene Sutter.

**Interrogatory No. 4. For each person identified in the response to interrogatory number 3, please state his or her job title and describe in detail the nature and scope of his or her duties, and what specific duties were performed in connection with the DSCC's tally sheet program.**

Answer to Interrogatory No. 4. As Executive Director, Mr. Richetti bore ultimate responsibility for the administration of the Committee, including but not limited to the tally program. Mr. Hickmott, as Mr. Richetti's Deputy, oversaw the operations of the Finance Division and the administrative staff, and also coordinated with the General Counsel in assuring that legal questions presented by the Committee's activities, including but not limited to the tally program, would be timely raised and addressed. Mr. Foley assisted in the explanations given to candidates regarding the tally program. Ms. Cooper and Ms. Buckman administered fundraising programs in the course of which tally information was distributed, requests to tally were received and recorded, and contributor and candidate questions about tally were addressed. Mr. Lehner's office also maintained records of contributions received which were "tallied" and executed procedures to clarify for any contributor in seeming doubt or error the precise nature of a "tallied" contribution and the distinction between a "tallied" contribution and an earmarked contribution within the meaning of the Act and related FEC regulations which the Committee by policy does not accept. Ms. Davis and Ms. Sutter handled many of the routine administrative tasks associated with the effort.

**Interrogatory No. 5. Please describe in full and complete detail when and how the DSCC informed Democratic Senate candidates of the tally sheet program.**

Answer to Interrogatory No. 5. DSCC informed Democratic candidates of the tally program at various times and in various ways throughout the cycle. Committee staff and

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counsel explained the program at "retreats" held separately for incumbent candidates and challengers. The Committee also periodically included discussions of the tally program in group or individual meetings with candidates or their representatives throughout the cycle. Written explanations of the program, such as the one entitled the Tally Option, were also developed and made available to candidates and donors. Staff and counsel also addressed questions about tally from candidates, their staffs, and donors as they arose.

**Interrogatory No. 6. Please describe in full and complete detail when and how the DSCC recruited or encouraged Democratic Senate candidates to participate in the tally sheet program (e.g., telephone calls, written solicitations, etc.).**

Answer to Interrogatory No. 6. The answer to this question is the same as the answer to Interrogatory No. 5. The DSCC informed candidates of the tally program in the same way it "recruited or encouraged" them to participate in that program.

**Interrogatory No. 7. Please state whether the DSCC offered, explicitly or impliedly, any incentive for participating in the tally sheet program to any Democratic Senate candidate and/or candidate committee.**

Answer to Interrogatory No. 7. DSCC explicitly stated that it would consider the total number of contributions "tallied" to a candidate in making decisions on the allocation of coordinated expenditure funding on behalf of candidates in their general election campaigns. The Committee stressed in particular that (1) if each class of candidates, incumbents and challengers, were successful in meeting goals for raising tallied contributions geared to their 441a(d) limit, and (2) if the Allocation Committee in the application of the other criteria (financial need and "winability") approved, the candidates could expect to receive certain percentages of their full 441a(d) in scheduled increments up to 100% of their 441a(d) limit. For example, incumbent candidates were advised that if they were able to raise 50% of their tally goal by the end of March and if class performance as a whole was successful (that is,



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other candidates also met their goals by that date), the Committee would consider whether the application of the other criteria would justify the allocation by that date of 25% of the full 441a(d) funding authorized by statute for their states. Thus, the Committee offered the incentive of an early allocation, the end of March, if candidates as a class and particular candidates met their tally fundraising goals and the Committee otherwise approved on the application of the other allocation criteria. Similar early allocation incentives were offered to challengers

**Interrogatory No. 8. If the answer to interrogatory number 7 is in the affirmative:**

- a. **Please describe in full and complete detail each such incentive by candidate or candidate committee;**
- b. **Please identify each and every person, by candidate or candidate committee, to whom the incentive(s) was offered or communicated;**
- c. **Please describe how and when the DSCC communicated the incentive(s) to each of the persons identified in response to interrogatory number 8(b).**

**Answer to Interrogatory No. 8.**

(a) The incentives described in the answer to interrogatory no. 7 fully describe the incentives offered by the Committee.

(b) All Democratic candidates for the Senate in 1992 received communications setting forth the described incentives for participation in the tally program

(c) DSCC informed Democratic candidates of the tally program at various times and in various ways throughout the cycle. Committee staff and counsel explained the program at "retreats" held separately for incumbent candidates and challengers. The

Committee also periodically included discussions of the tally program in group or individual meetings with candidates or their representatives throughout the cycle. Written explanations of the program, such as the one entitled the Tally Option, were also developed and made available to candidates and donors. Staff and counsel also addressed questions about tally from candidates, their staffs, and donors as they arose

**Interrogatory No. 9. Please identify each and every Democratic Senate candidate who participated in the tally sheet program during the 1992 general election campaign.**

Answer to Interrogatory No. 9 If by "participated," the question intends candidates who both agreed to participate and raised or were credited with "tallied" contributions, these candidates were as follows:

Senator Breaux	Senator Bumpers	Senator Conrad
Senator Daschle	Senator Dodd	Senator Ford
Senator Fowler	Senator Glenn	Senator Graham
Senator Hollings	Senator Inouye	Senator Leahy
Senator Mukulski	Senator Reid	Senator Sanford
Senator Shelby	Bob Abrams	Congressman AuCoin
Barbara Boxer	Carol Moseley Braun	Ben Nighthorse Campbell
Congressman Dorgan	Dianne Feinstein	Russ Feingold
Joe Hogsett	Steve Lewis	Jean Lloyd Jones
Patty Murray	Gloria O'Dell	Congressman Owens
John Rauh	Geri Rothman-Serot	Claire Sargent
Tony Smith	Congressman Stallings	Lynn Yeakel

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**Interrogatory No. 10. For each and every Democratic Senate candidate identified in the response to interrogatory number 9, please provide the following information:**

- a. By candidate, please state the contributor's name, and the date and the amount of each contribution made payable to the DSCC that was designated for that candidate's tally sheet.
- b. By candidate, please state the total amount of contributions tallied for each candidate.

Answer to Interrogatory No. 10.

(a) DSCC is continuing to address the requirements of the questions seeking detailed information about each contributor in the 1992 election cycle whose contribution was "tallied" under the program

(b) The information requested is provided in Attachment A.

**Interrogatory No. 11. Please describe in full and complete detail the method by which the DSCC recorded contributions designated for a candidate's tally account.**

Answer to Interrogatory No. 11. When DSCC received a contribution accompanied by a stated contributor intention to "tally" to a particular candidate, the contributor statement and check would be forwarded to the office of the Comptroller. A Check Tracking Memorandum would be prepared reflecting this and other information about the contribution. Computer records on each contributor were also noted to show the running summary of tallied contributions received, and a report was periodically prepared for participating candidates so that they could review the progress of their efforts and also check for omissions and inaccuracies.

**Interrogatory No. 12. State whether tallied contributions were segregated in any way from non-tallied contributions made to the DSCC.**

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Answer to Interrogatory No. 12. No. Tallied contributions were not segregated in any way from non-tallied contributions

**Interrogatory No. 13. Please identify each and every bank account into which the DSCC deposited non-tallied contributions in the 1992 General Election. For each and every account:**

- a. Please identify the bank at which the account is held.
- b. Please state the name of the account and the date the account was opened.

Answer to Interrogatory No. 13 The DSCC had two accounts.

(a) Both were located at NationsBank in Washington, D.C.

(b) Democratic Senatorial Campaign Committee Candidate Account opened April 11, 1986; and Democratic Senatorial Campaign Committee Operating Account opened August 29, 1985

**Interrogatory No. 14. State whether the DSCC deposited tallied contributions into the bank account or accounts identified in the response to interrogatory number 13.**

Answer to Interrogatory No. 14 Yes DSCC deposited tallied contributions in these accounts.

**Interrogatory No. 15. If the response to interrogatory number 14 is in the affirmative, please identify each and every bank account into which tallied contributions were deposited.**

Answer to Interrogatory No. 15 Tallied contributions were deposited in both accounts

Interrogatory No. 16. If the response to interrogatory number 14 is in the negative, please identify each and every bank account into which the DSCC deposited tallied contributions. For each and every account:

- a. Please identify the bank at which the account is held.
- b. State the name of the account and the date the account was opened.

Answer to Interrogatory No. 16 Not applicable

Interrogatory No. 17. Regarding the invitation to the "U.S. Senate Campaign Countdown" attached as Exhibit 1 to the complaint in MUR 3620 (the "Campaign Countdown invitation"), please provide the following information:

- a. Please identify all persons who were involved and/or who had responsibility, including supervisory responsibility, for writing, producing and/or distributing the Campaign Countdown invitation, and please specify each person's role.
- b. Please state the total number of Campaign Countdown invitations mailed or otherwise distributed; what was the source of the distribution list?
- c. Of those invited, how many persons had given the maximum amount to any 1992 Democratic Senatorial campaign?

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- d. Please describe in full and complete detail how the DSCC determined to whom the Campaign Countdown invitation would be mailed or otherwise distributed. Was a person's status as a "maxed out" contributor to a 1992 Democratic Senatorial campaign a factor in being included on the distribution list?
  - e. State whether the DSCC produced and distributed more than one version of the Campaign Countdown invitation. If so, identify and produce a copy of each.
  - f. Identify and produce a copy of all documents that accompanied the Campaign Countdown invitation.

Answer to Interrogatory No. 17.

(a) As Executive Director, Mr. Richetti bore ultimate responsibility for the administration of the Committee, including, but not limited to, the tally program. Mr. Hickmott, as Mr. Richetti's Deputy, oversaw the operations of the Finance Division and the administrative staff and also coordinated with the General Counsel, Robert F. Bauer, in assuring that legal questions presented by the Committee's activities, including, but not limited to, the tally program, would be timely raised and addressed. Ms. Cooper and Ms. Beckman administered fundraising programs in the course of which tally information was distributed, requests to tally were received and recorded, and contributor and candidate questions about tally were addressed. All of these individuals would have had some role in the preparation, production, review or distribution of any DSCC fundraising invitation.

(b) While the exact number of people on the mailing list is unknown, the source of the distribution list would have been members and prospective members of the DSCC Majority Trust. At that time, the Majority trust numbered approximately 100.

(c) Unknown



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(d) The distribution list would have been to all Majority Trust or prospective Majority Trust donors. Status as a "maxed out" contributor to an individual Senate candidate would not have been a factor in being included by the DSCC on the mailing list. In this regard, DSCC did not track which donors had "maxed out" to individual Senate campaigns.

(e) Unknown. DSCC does not have any copies of the invitation or any potential accompanying materials.

(f) DSCC does not have any copies of the invitation or any potential accompanying materials.

**Interrogatory No. 18. With regard to the events referred to in the Campaign Countdown invitation, i.e., the Campaign Countdown at DSCC Headquarters; cocktails at the home of Senator and Mrs. Edward M. Kennedy; dinner at the home of Senator and Mrs. Charles S. Robb; and breakfast at the home of Senator and Mrs. John D. Rockefeller, please provide the following information:**

- a. **The number of people who attended each event.**
- b. **The total number of contributions raised at each event, the name of each contributor at each event, and the amount of each contribution.**
- c. **By event, the total number of tallied contributions, the amount of each tallied contribution, the identity of each contributor who made a tallied contribution, and the name of the candidate for whom each contribution was tallied.**

Answer to Interrogatory No. 18. It does not appear that this event ever took place. If it did, the answer to all subparts is "unknown."

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**Interrogatory No. 19. With regard to the memorandum entitled "The Tally Option" attached as Exhibit 2 to the complaint in MUR 3620 (the "Tally Option memorandum"), please provide the following information:**

- a. Please identify all persons who were involved and/or had responsibility, including supervisory responsibility, for writing, producing and/or distributing the Tally Option memorandum, and specifically describe each person's role.**
- b. Please state how many copies of the Tally Option memorandum were mailed or otherwise distributed; what was the source of the distribution list?**
- c. How many recipients of the Tally Option memorandum had given the maximum amount to any 1992 Democratic Senatorial campaign?**
- d. Please describe in full and complete detail how the DSCC determined to whom the Tally Option memorandum would be mailed or otherwise distributed. Was a person's status as a "maxed out" contributor to a 1992 Democratic Senatorial campaign a factor in being included on the distribution list?**
- e. State whether the DSCC produced and distributed more than one version of the Tally Option memorandum. If so, identify and produce a copy of each.**
- f. Identify and produce a copy of all documents that accompanied the Tally Option memorandum.**

Answer to Interrogatory No. 19

(a) As Executive Director, Mr. Richetti bore ultimate responsibility for the administration of the Committee, including, but not limited to, the tally program

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Mr. Hickmott, as Mr. Richetti's Deputy, oversaw the operations of the Finance Division and the administrative staff and also coordinated with the General Counsel, Robert F. Bauer, in assuring that legal questions presented by the Committee's activities, including, but not limited to, the Tally program, would be timely raised and addressed. Ms. Cooper and Ms. Beckman administered fundraising programs in the course of which tally information was distributed, requests to tally were received and recorded, and contributor and candidate questions about tally were addressed. All of these individuals would have had some role in the preparation, production, review or distribution of the Tally Option memorandum.

(b) The number of copies mailed or otherwise distributed is not known. No one distribution list exists, but instead DSCC staff made copies available to candidates, donors and supporters involved in fundraising to assist them in understanding the program.

(c) Unknown

(d) There was no distribution list. Any candidate, member of a candidate's staff, donor, or Committee or candidate supporter prepared to raise funds for a candidate or for the Committee may have received or been mailed a copy of the Tally Option. Any number of persons who had contributed the maximum to one or more 1992 Senate candidates, but not to the DSCC, may have received a copy of the Tally Option memo, but the numbers of such persons or their identities are unknown.

(e) Unknown. The version identified in these interrogatories is the only one from the 1992 cycle known with certainty to exist.

(f) The tally option may have been distributed along with other documents or information about the Committee on an ad hoc basis, but there are no copies of such distributions or further information about their nature or contents.

**Interrogatory No. 20. With regard to the August 12, 1992 memorandum from Steve Ricchetti and addressed to "Senate AA's and Campaign Finance Directors"**

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attached as Exhibit 3 to the complaint in MUR 3620 (the "August 12 memorandum"), please provide the following information:

- a. Please identify all persons who were involved and/or had responsibility, including supervisory responsibility, for writing, producing and/or distributing the August 12 memorandum, and specifically describe each person's role.
- b. Please state whether the August 12, 1992, memorandum was sent to all Democratic Senate AA's and Campaign Finance Directors.
- c. If the answer to the interrogatory number 20(b) is in the negative, please identify the Democratic Senate AA's and Campaign Finance Directors to whom the August 12 memorandum was sent, and please explain how the DSCC determined to which AA's or Campaign Finance Directors the August 12 memorandum would be sent.
- d. Please state whether the August 12 memorandum was sent to all Democratic Senate Candidates or candidate committees.
- e. If the answer to interrogatory number 20(d) is in the negative, please identify the Democratic Senate Candidate(s) or candidate committees to whom the August 12 memorandum was sent, and please explain how the DSCC determined to which candidates or candidate committees the August 12 memorandum would be sent.
- f. Please identify and produce a copy of all documents that accompanied the August 12 memorandum.

- g. **Please identify which candidates or candidate committees invited donors to the events discussed in the August 12 memorandum.**

Answer to Interrogatory No. 20

(a) As Executive Director, Mr. Richetti bore ultimate responsibility for the administration of the Committee, including but not limited to the tally program Mr. Hickmott, as Mr. Richetti's Deputy, oversaw the operations of the Finance Division and the administrative staff and also coordinated with the General Counsel, Robert F. Bauer, in assuring that legal questions presented by the Committee's activities, including but not limited to the Tally program, would be timely raised and addressed Ms. Cooper and Ms. Beckman administered fundraising programs in the course of which tally information was distributed, requests to tally were received and recorded, and contributor and candidate questions about tally were addressed All of these individuals would have had some role in the preparation, production, review or distribution of the August 22, 1992, memorandum.

(b) The memorandum appears to have been prepared for AA's and Finance Directors of 1992 U.S. Senate candidates.

(c) The mailing or distribution has not been located or may not exist, but the Committee's intention was to send the memorandum to AA's and Finance Directors of 1992 United States Senate campaigns.

(d) It appears that this was the Committee's intention, but is not known whether this was accomplished

(e) It appears that this was the Committee's intention, but is not known whether this was accomplished

(f) Unknown, if any

(g) Unknown, if any

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**Interrogatory No. 21. With regard to the Campaign Countdown and the other events referred to in the August 12 memorandum, state whether the DSCC drafted, prepared, or supplied solicitations and/or samples of solicitations to be sent to contributors by any of the Democratic Senate candidates or candidate committees. If so, please produce a copy of each such solicitation and/or sample solicitation.**

Answer to Interrogatory No. 21. Unknown, although the Committee's Finance Division staff may have made available generic materials on the tally program and other programs and activities of the DSCC.

**Interrogatory No. 22. With regard to the August 9, 1992, solicitation signed by Dianne Feinstein attached as Exhibit 4 to the complaint in MUR 3620, did the DSCC draft, prepare, supply, or otherwise participate in the production of the solicitation? If so, please identify each such person and describe his or her role in connection with the solicitation.**

Answer to Interrogatory No. 22. While DSCC staff may have reviewed or advised on the contents or concept of the solicitations, it is unknown whether in this instance this was the case and, if so, to what extent.

**Interrogatory No. 23. With regard to the solicitation entitled "Terry Sanford's Campaign for U.S. Senate" attached as Exhibit 5 to the complaint in MUR 3620, did the DSCC draft, prepare, supply, or otherwise participate in the production of the solicitation? If so, please identify each such person and describe his or her role in connection with the solicitation.**

Answer to Interrogatory No. 23. While DSCC staff may have reviewed or advised on the contents or concept of the solicitations, it is unknown whether in this instance this was the case and, if so, to what extent.



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**Interrogatory No. 24. With regard to the September 14, 1992, solicitation from the Feinstein for Senate Committee attached as Exhibit 1 to the supplement to the complaint in MUR 3617, did the DSCC draft, prepare, supply, or otherwise participate in the production of the solicitation? If so, please identify each such person and describe his or her role in connection with the solicitation.**

Answer to Interrogatory No. 24. While DSCC staff may have reviewed or advised on the contents or concept of the solicitations, it is unknown whether in this instance this was the case and, if so, to what extent.

**Interrogatory No. 25. Did the DSCC draft, prepare, supply or otherwise participate in the production of any solicitation issued by any Democratic Senate candidate or candidate committee which referred to the tally program?**

Answer to Interrogatory No. 25. While DSCC staff may have reviewed or advised on the contents or concept of the solicitations, it is unknown whether in this instance this was the case and, if so, to what extent.

**Interrogatory No. 26. If the answer to interrogatory number 25 is in the affirmative:**

- a. **Please identify and produce a copy of each such solicitation.**
- b. **For each such solicitation, identify each and every person who was involved in the solicitation and describe the nature of each person's involvement.**

Answer to Interrogatory No. 26. While DSCC staff may have reviewed or advised on the contents or concept of the solicitations, it is unknown whether in this instance this was the case and, if so, to what extent.

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**Interrogatory No. 27. Identify each person who had responsibility for or who is involved in deciding the amount of coordinated party expenditures the DSCC will expend on behalf of each Democratic Senate candidate or candidate committee.**

Answer to Interrogatory No. 27 The decision on the allocation of 441a(d) funding is made by an allocation committee composed of the Chairman of the DSCC, past Chairs of the DSCC and the Co-Chairs of separate fundraising programs. The Allocation Committee considers recommendations and data supplied by DSCC staff.

**Interrogatory No. 28. For each person identified in interrogatory number 27, describe the nature of her or her involvement in these decisions.**

Answer to Interrogatory No. 28 The Allocation Committee members bear equal responsibility to judge, on the basis of the allocation criteria, the appropriate amounts to be allocated to the various candidates under consideration.

**Interrogatory No. 29. Identify the factors or criteria considered by the DSCC in determining the amount of coordinated party expenditures to be spent on behalf of a Democratic Senate candidate's campaign.**

Answer to Interrogatory No. 29 The Committee considers total tallied contributions raised by a candidate, the candidate's electoral prospects and financial need.

**Interrogatory No. 30. Are the factors or criteria used by the DSCC to determine the amount of coordinated party expenditures to be spent on behalf of a candidate identical for candidates who have raised tallied contributions as for candidates who have not?**

Answer to Interrogatory No. 30 No

**Interrogatory No. 31. If the answer to interrogatory number 30 is in the negative, please describe in full and complete detail how the factors or criteria differ.**

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**Answer to Interrogatory No. 31.** The amount of contributions tallied by a candidate is one of the criteria considered by the Committee. The other criteria apply to all candidates -- specifically, financial need and elective prospects.

**Interrogatory No. 32.** If the response to interrogatory number 30 is in the affirmative, please state whether the factors or criteria considered by the DSCC in determining the amount of coordinated party expenditures are applied identically for candidates who have raised tallied contributions as for those who have not.

**Answer to Interrogatory No. 32.** Not applicable.

**Interrogatory No. 33.** If the response to interrogatory number 32 is in the negative, please describe in full and complete detail how the applications differ.

**Answer to Interrogatory No. 33.** The amount of contributions tallied by a candidate is one of the criteria considered by the Committee. The other criteria apply to all candidates -- specifically, financial need and elective prospects.

**Interrogatory No. 34.** Please state whether candidates who raise tallied contributions are given preference in any way over those who do not raise tallied contributions when the DSCC decides the amount of coordinated party expenditures it will spend on behalf of a Democratic Senate candidate's campaign. If so, describe how or in what ways candidates who raised tallied contributions are given preference over those who have not.

**Answer to Interrogatory No. 34.** Candidates who raise tallied contributions have satisfied a criterion taken into account by the Allocation Committee. All candidates, those who have tallied and those who have not (or who have tallied limited amounts), are evaluated on the other criteria of elective prospects and financial need. A candidate who has not tallied any or many contributions, but who has a need for funds and apparently significant chances to

win the general election will receive substantial consideration and likely a significant allocation of coordinated expenditure funding within the resources available to the Committee.

Likewise, a candidate who has raised substantial amounts of tally money but whose own campaign is well funded and in a commanding position to win, will likely receive a limited allocation, if any. Committee records for 1992 show that many candidates received either substantially more or substantially less than they "tallied," a result of the other factors which control the Committee's allocation decisions.

**Interrogatory No. 35. Please state whether you contend that tallied contributions are not earmarked contributions, as defined and regulated by 2 U.S.C. § 441a(a)(8) and the governing regulations. If you so contend:**

- a. Please state and describe in full and complete detail each and every fact which supports this contention.**
- b. Please identify and produce each and every document which you contend supports this contention.**

**Answer to Interrogatory No. 35**

(a) DSCC does not accept "earmarked" contributions, and DSCC so advises contributors when there is confusion or a question about whether it does so. The Committee from time to time receives contributions which on their face or in an accompanying letter suggests an intention to earmark, and in these instances, the Committee provides the contributor with a letter prepared by counsel which clarifies the Committee's policy, explains that the Committee retains full discretion over the allocation of all contributions it receives, and offers a refund if the contributor does not wish to contribute on this basis. So DSCC does not accept contributions on any basis which would compel it to expend them on behalf of any candidate, in full or in part.

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The record confirms, in fact, that the DSCC retains and exercises in full the discretion to decide how to spend the contributions it receives, including the tallied contributions. Candidates who raise a great deal of tally money, up to or over their expenditure limit under 441a(d), may receive a token or modest allocation of 441a(d) funding well below that limit. Candidates who raise little tally money may receive a full or close to full allocation up to the legal limit of 441a(d) funding. The reason is that the Committee decides the allocations on the basis of campaign and financial need, with tally taken into consideration as a criterion but not the predominant one.

The Committee tally program is intended to encourage candidates and their supporters to participate in the programs of the national party committee devoted to Senate elections. It is an incentive, not a guarantee, that monies contributed will be channeled to a particular candidate. The incentive does not relate to particular contributions a candidate raises for his or her "tally", but only to the total amount of such tallied contributions. Moreover, the program follows naturally from the fact -- still not always well understood in the political community -- that the Act confers on party committees extraordinary spending authority in Senate elections under section 441a(d). Party committees with this authority must promote it to attract donors, and the donors it can expect to attract are those interested in the party's candidates and the specific help the party can provide them.

An arrangement involving "earmarking" within the meaning of the statute would undermine the institutional party objectives served by the tally program. DSCC is seeking broadbased involvement by all of its candidates in the Committee's fundraising programs, with a view toward creating a pool of funds to support its nationwide efforts in all Senate elections. If candidates succeed, as a class, in meeting tally goals, DSCC will stand a substantial chance of success in developing the necessary resources. If, however, candidates were permitted to "earmark" (and for the sake of argument, without regard to the legal issues thereby presented under the statutory contribution limitations), candidates would lay claim to what they raised

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with two consequences. First, DSCC would have no right or ability to channel monies where needed, especially to campaigns in strong competitive positions but with limited resources. Second, participation in the program would decline, because candidates would recognize that it was not a communal or true party enterprise, but rather a means for candidates with successful fundraising operations to raise even more for themselves. An earmarked contribution, at heart, involves a relationship of donor to candidate, with the party committee or other conduit acting more or less ministerially to assure that the contribution is made. A tallied contribution involves the relationship of candidates and supporters to the party, with the party committee seeking for its own purposes to encourage party support and exercising full control over the ultimate disposition of the funds.

(b) The Committee has produced today a full record of the allocations to candidates with varying tally fundraising results which show that candidates do not receive what they can tally but rather what their political position and financial need suggests to the DSCC Allocation Committee that they require to successfully compete in the general election.

In addition, the Committee has produced copies of guidance prepared for Committee staff to assist them in explaining the operation of the tally program, including form letters used to respond to contributors in seeming doubt or error about the difference between a "tallied" and an "earmarked" contribution.

**Interrogatory No. 36. With regard to the form letter that the DSCC asserts was sent to clarify a contributor's intent when it received a donation that appeared to be earmarked (Exhibit A of the DSCC's Response to the Complaints dated 11/9/92), please provide the following information:**

- a. **Please describe in full and complete detail the circumstances under which the DSCC sent these form letters.**



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- b. Please state whether the DSCC sent such a form letter to every contributor who gave a tallied contribution.
  - c. If the answer to interrogatory number 36(b) is in the negative, please identify and explain which contributors of tallied contributions were sent such a form letter.
  - d. Please identify and produce any other versions of this form letter that were sent by the DSCC.
  - e. Please state whether any contributor responded to one of these form letters during the 1992 election cycle.
  - f. If the answer to interrogatory number 36(e) is in the affirmative, please state how many responses were received and describe fully the nature of the responses.
  - g. If the answer to interrogatory number 36(e) is in the affirmative, please state how many contributors requested refunds in response to these form letters.

Answer to Interrogatory No 36

- (a) DSCC sent the letters whenever it appeared that a contributor may have intended to earmark a contribution for a particular candidate.
- (b) No
- (c) DSCC sent the letters whenever it appeared that a contributor may have intended to earmark a contribution for a particular candidate.
- (d) None
- (e) Yes
- (f) The Committee is continuing to collect these documents in addressing the requirements and related issues present by detail contributor identification. One such response is included which shows that the contributor apparently first understood that a "tallied"


contribution might not have any anticipated benefit for the candidate in whom he was most interested, and then upon further explanation of the tally program, concluded that he was satisfied with the program and the treatment of his contribution under it.

(g) DSCC is unaware of any instances in which a refund was requested.

**Interrogatory No. 37. Regarding the assertion in the DSCC's Response to the Complaints that the DSCC has an "express policy of not accepting earmarked contributions," please describe in full and complete detail each and every reason for such a policy and please state when the DSCC instituted this policy.**

Answer to Interrogatory No. 37. Although the precise date of the origination of this program is unknown, DSCC has for some years maintained a policy of refusing "earmarked" contributions in fulfillment of a policy of retaining control over contribution and coordinated expenditure decisions.

FURTHER AFFIANT SAYETH NOT.

  
Robert F. Bauer

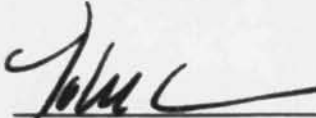
Subscribed and sworn to before me this 23rd day of January 1995.

  
Notary Public

DINA J. PAPP  
Notary Public, Washington, D.C.

My commission expires October 31, 1998

Respectfully Submitted,



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Marc E. Elias  
PERKINS COIE  
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Attorneys for Democratic Senatorial  
Campaign Committee

Dated: January 23, 1995

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February 2, 1995

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FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

Lawrence M. Noble, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

RE: MUR 3620, Feinstein for Senate Committee, Michael  
J. Barrett, as Treasurer

Dear Mr. Noble:

This response is submitted on behalf of the 1992 Feinstein for Senate Committee (the "Committee") and Michael J. Barrett, as Treasurer, to the Federal Election Commission ("FEC" or the "Commission") finding of reason to believe in the above-referenced matter. This response is in addition to the responses previously submitted on behalf of the Committee in MURs 3617 and 3620. Also attached are the Committee's responses to the Commission's Interrogatories and Request for Production of Documents. Upon review of these documents, the Commission should take no further action and close the file in this matter.

We believe that the Factual and Legal Analysis ("staff Analysis") which forms the basis for the Commission's finding in this matter is based on an untenable factual and legal conclusion: that is, that contributors to the DSCC who tally their contributions to a specific candidate have thereby "intended at least an 'implied encumbrance' within the meaning of the earmarking regulation," and that this, therefore, constitutes "earmarking." Staff Analysis at 18. This assertion goes way beyond the language of the FEC regulations, the statute and the intent of Congress in allowing party committees to make coordinated expenditures on behalf of their nominees. It is also unsupported by the facts of the operation of the DSCC tally program.

1. A notation by a DSCC contributor to credit a contribution to a candidate's tally is not a legal "encumbrance" within the meaning of 11 C.F.R. § 110.6.

11 C.F.R. § 110.6(b) defines earmarking as a

designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.

The staff Analysis in this matter contends that a notation by a contributor to credit his or her contribution to a candidate's tally constitutes an implied encumbrance. This contention is incorrect for the following reasons:

o An "encumbrance" as generally used in legal terminology means a "legal claim, lien, charge, or liability attached to and binding real property" such as a mortgage or other claim against property or an estate.<sup>1</sup> An expression of contributor intent to tally a contribution to a particular candidate in no way places a legal burden on the use of those funds by the DSCC. Thus, it is legally incorrect that tallied contributions are subject to an encumbrance within the meaning of Section 110.6.

o The staff Analysis at 18 suggests that tallied contributions demonstrate "at least" a contributor "intent" to place an "implied encumbrance" on a contribution. This is simply not the case. The notation that the contribution is to be credited to the Feinstein tally or account is nothing more than a means of noting that the contribution is being made because of the efforts of that particular candidate, not in any way a restriction on the use of those funds. Thus, there is no encumbrance or intent to encumber (assuming arguendo that "intent" to encumber would fall within the meaning of the earmarking regulations). Because the candidate's efforts to raise funds for the DSCC -- an indisputably permissible activity -- is one factor in the DSCC's determination as to the amount of funds to be spent for that candidate, there must be some way of noting which candidate's efforts produced the contribution. That is what the tally is about.

**2. It is not the contributor's intent that determines what funds are spent on behalf of a particular candidate under the tally system.**

In order to constitute "earmarking", a contributor's designation, instruction or encumbrance must also **result** in funds expended on behalf of a particular candidate. Under the tally system, it is not the contributor's notation at all that is a criteria for determining the amount of coordinated expenditures. The amount of funds **raised** with the assistance of a particular candidate is the pertinent factor.

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<sup>1</sup> See definitions of "encumbrance" Merriam Webster's Collegiate Dictionary, 10th Edition 1993, Black's Law Dictionary, 6th Edition 1990.

It is clear from the information provided by the DSCC as well as from the attached Committee responses that the contributors' notations to tally contributions to Senator Feinstein did not determine the amount of funds spent on behalf of the campaign. The Senator and the Committee fully understood, and communicated to contributors, that the DSCC considered a variety of factors in determining how to allocate its spending among the various candidates. These factors included: the winnability of the race; whether the candidate had a serious challenger; whether the candidate has been successful in his or her own fundraising efforts; and whether the candidate has assisted the DSCC in its fundraising efforts. The tally program is the means for the DSCC to evaluate this last criteria. The staff Analysis is reading into this program a contributor restriction that just does not exist.

Moreover, as the evidence submitted by the Feinstein Committee further demonstrates, the Committee had absolutely no control over the amount of funds spent on its behalf by the DSCC and, indeed, did not even have or maintain independent accurate records of the amounts of tallied contributions. If the Committee had a legal right to these funds, surely it would have formally tracked these funds and directed their disbursement. This simply did not happen.

**3. The FEC has never codified its apparent current position that the earmarking regulations even apply to fundraising for 441a(d) coordinated expenditures.**

Many years ago, in MUR 377, the Commission concluded that the applicability of "earmarking" to Section 441a(d) should be dealt with in the Commission's regulations. At that time, the Commission was fully aware of the fact that there were significant policy issues as to whether party committees raising funds to make fully coordinated 441a(d) expenditures should be restricted from accepting contributions unambiguously "earmarked" for that purpose. Since that time, the Commission has failed to address this issue in its regulations.

In light of the failure to resolve this question by regulation -- even as to indisputably earmarked contributions -- the Commission should certainly not attempt to apply this regulation to contributions where the parties contend vigorously and have evidence to support that the contributions were not earmarked.

**4. Finally, the Committee meticulously followed the DSCC's instructions regarding the tally in every regard.**

Committee staff were fully aware that contributions to the DSCC could not be "earmarked" for the Feinstein campaign. This was communicated to contributors and staff routinely sought DSCC review of solicitations and followed DSCC advice in this regard. If, in the absence of clear FEC guidance on earmarking and its relation to the party's coordinated expenditure program, the Commission nonetheless pursues this matter, it should be pursued not against campaigns following the DSCC's advice and guidance, but against the DSCC.



Lawerence M. Noble, Esq.  
Page 4

In raising funds for the DSCC in 1992, the Committee was relying specifically on the legal advice provided by the DSCC that the tally system was permissible and that tallied contributions were not in any way earmarked to the candidate. Even if the Commission should pursue this matter, without regulations and despite the facts that demonstrate that these contributions were not earmarked, it should certainly not be pursued against the campaigns relying on the advice of the DSCC that the tally system did not result in earmarked contributions.

If you have any further questions concerning this matter or if you need to contact any of the Committee employees identified in the Committee's attached Responses, please contact me.

Sincerely,

  
Lyn Utrecht

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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
Feinstein for Senate Committee ) MUR 3620  
and Michael J. Barrett, as )  
Treasurer )

FEB 8 9 31 AM '55  
FEDERAL ELECTION COMMISSION  
OFFICE OF THE CLERK

**RESPONSE OF FEINSTEIN FOR SENATE COMMITTEE AND  
MICHAEL J. BARRETT, AS TREASURER, TO INTERROGATORIES**

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**1. Please describe in full and complete detail when and how the DSCC informed the Feinstein campaign of the DSCC's tally sheet program.**

All candidates who receive the Democratic nomination for Senate are obviously aware that the party, through the Democratic Senatorial Campaign Committee ("DSCC") may make expenditures on behalf of the general election campaign of the party's Senate candidate. As with every other campaign, the Feinstein for Senate Committee (the "Committee") was aware of "441a(d)" coordinated expenditures and was aware that the DSCC had to raise the funds necessary in order to make any such expenditures.

To the best of the recollection of Committee staff, some time prior to the beginning of the general election campaign, the DSCC provided the Committee with a packet of information concerning the DSCC's tally sheet program. This information explained the ability of the party to raise and spend funds on behalf of Senate candidates, and the role of the DSCC.

During this same period, Janet Keller, a DSCC fundraiser, came to the Feinstein Committee headquarters in Los Angeles, California, to explain the DSCC fundraising efforts and the tally program. During the campaign Ms. Keller served as the DSCC liaison to the Committee.

All supervisory fundraising employees and consultants of the Committee were provided with the DSCC materials or had immediate access to them. Many Committee employees had previous campaign experience and were already familiar with the DSCC tally.

**2. Please describe when and how the DSCC recruited or encouraged the Feinstein campaign to participate in the tally sheet program (e.g., telephone calls, written solicitation, etc.).**

As stated in response to question 1 above, all Senate campaigns are aware of the DSCC's ability to make coordinated expenditures on behalf of the campaign. The fact that the DSCC can do so is in and of itself sufficient "encouragement" to a Senate campaign to participate in the tally. There is an obvious common goal between the DSCC and its Senate nominee to insure that the DSCC has sufficient funds available to make the maximum amount of coordinated expenditures permitted. Thus, we do not fully understand the meaning of "recruit" or "encourage" in this question, because the question implies some affirmative action that, as a practical matter, would not generally occur.

While the Committee is not aware of specific efforts to encourage or recruit participation, the DSCC did maintain working contact and liaison with the Committee regarding fundraising efforts. The DSCC offered joint fundraising opportunities, the assistance of other Senators in raising funds and general assistance in identifying potential contributors. While the DSCC was primarily responsible for raising its funds, and the Committee was primarily responsible for raising its funds, Janet Keller, the DSCC fundraiser, made weekly visits to the Committee's Los Angeles office and periodic visits to the Committee's San Francisco office.

**3. Please state whether the DSCC offered, explicitly or impliedly, any incentive for participating in the tally sheet program to the Feinstein campaign.**

We are unclear as to the meaning of "incentive" in this question. As stated in response to questions 1 and 2 above, no "incentives" were necessary because of the commonality of interest of the DSCC and the Committee to insure that the DSCC had funds available to make permissible coordinated expenditures. While it was made quite clear to the Committee by the DSCC that participation in the tally would not guarantee that any particular amount of coordinated expenditures would be made, it was equally obvious that if the DSCC had no money, it could not make any coordinated expenditures. Thus, the only "incentive" for the Committee to participate was the obvious interest of the Committee to assist the DSCC in raising funds.

The DSCC never promised the Committee anything in return for tallied contributions. It was clear at all times that the amount of tallied contributions raised by or with the assistance of the Committee would **not** determine the amount of coordinated expenditures made by the DSCC. While the tallied amount would be a factor in determining how much money was available to spend, the primary factors are: whether the race is winnable; whether the candidate has a serious challenger; whether the candidate has been successful in his or her own campaign fundraising; whether the candidate has assisted the DSCC in its fundraising efforts; and the relative priority of other DSCC expenditures.

**4. If the answer to interrogatory number 3 is in the affirmative:**

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- a. Please describe in full and complete detail each such incentive;
- b. Please identify each and every person to whom the incentive(s) was offered or communicated;
- c. Please describe how and when the DSCC communicated the incentive(s) to each of the persons identified in response to interrogatory number 4(b).

See the answer to question 3 above.

5. With regard to the August 9, 1992 solicitation signed by Dianne Feinstein attached as Exhibit 4 to the complaint in MUR 3620 (the "August 9 solicitation"), please provide the following information.

- a. Please identify all persons who were involved and/or who had responsibility, including supervisory responsibility for writing, producing and/or distributing the August 9 solicitation and please specify each person's role.

Tricia Riffenburgh, the Feinstein Committee Deputy Finance Director, was the point person in the Los Angeles office who was responsible for implementing and managing the details of the August 27 event, including writing, producing and distributing the August 9 solicitation.

It was the normal procedure of the Feinstein campaign to send a draft of any letter or solicitation to the DSCC for approval. The process in this instance was the same. The initial letter was drafted by either Tricia Riffenburgh or Janet Keller of the DSCC. Afterward, the letter was sent to the DSCC and it is the Committee's understanding that it was approved by legal counsel.

- b. Please state the total number of August 9 solicitations mailed or otherwise distributed; what was the source of the distribution list?

The Committee does not have records indicating the number of solicitations mailed or distributed or indicating the specific sources of the distribution list. Based upon the size of the house where the event was held and the best recollection of Tricia Riffenburgh, the campaign estimates that approximately 500 to 700 persons were invited. Among the sources of the distribution list were the campaign's contributor database as well as potential contributors identified by the DSCC, including individual who were identified as likely to be interested in seeing Senator Bentsen.

- c. Of those solicited, how many persons had given the maximum limit to the Feinstein campaign?

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Again, the Committee did not maintain records of the attendees or contributors to this event and cannot, therefore, respond to this question.

- d. **Please describe in full and complete detail how the Feinstein campaign determined to whom the August 9 solicitation would be mailed or otherwise distributed. Was a person's status as a "maxed" out contributor to the Feinstein campaign a factor in being included on the distribution list?**

The Committee took into account several factors when determining the invitation list for the August 27 event. These considerations included whether the person had a history of contributing to Senator Feinstein's previous campaigns, e.g. the 1990 Governor's race; whether the person had made a prior contribution to the DSCC; whether the person had previously contributed to Senator Bentsen or was likely to be interested in meeting or seeing Senator Bentsen; and whether the person had given the maximum contribution limit to the Feinstein campaign. A person's status as a "maxed" out contributor was only one factor used to determine who would be invited to the August 27 event.

Since the Committee's first priority was obviously to raise the maximum possible funds for its own efforts, the Committee routinely attempted to identify individuals to contribute to the DSCC who might otherwise be unable or unwilling to contribute to the Feinstein Committee directly. This was necessary to avoid fundraising conflicts between the party and the candidate with a limited pool of potential Democratic contributors. Maxed-out status was only one of the ways such contributors were identified. The Bentsen event provides a good example of the other ways that potential DSCC contributors might be identified who would be viewed as not interfering with the Committee's own fundraising efforts, in that there were undoubtedly individuals who might not have been interested in contributing to the Feinstein Committee directly, but would be willing to attend an event with Senator Bentsen.

- e. **Please state whether the Feinstein campaign produced and distributed more than one version of the August 9 solicitation. If so, identify and produce a copy of each.**

There was only one version of the August 9 solicitation.

- f. **Identify and produce a copy of all documents that accompanied the August 9 solicitation.**

Attached is a copy of the response card which accompanied the August 9 solicitation. There were no other documents attached to the solicitation.

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- g. Please identify each person who attended the evening with Senator Bentsen on August 27, as described in the August 9 solicitation.**

The Feinstein campaign is unable to identify each person who attended the Senator Bentsen/DSCC event on August 27.

- h. Please state the total number of tallied contributions made in response to the August 9 solicitation and/or in conjunction with the August 27 fundraiser, the amount of each such tallied contribution and the identity of each contributor who made a tallied contribution.**

The campaign does not have records that reflect this information for the August 27 event.

- i. Please state the total number of non-tallied contributions made in response to the August 9 solicitation and/or in conjunction with the August 27 fundraiser, the amount of each such tallied contribution and the identity of the contributor who made a non-tallied contribution.**

This was a DSCC event not a Committee event, therefore, the Committee has no records of contributors.

**6. With regard to the September 14, 1992 solicitation from the Feinstein for Senate Committee attached as Exhibit 1 to the supplement to the complaint in MUR 3617 (the "September 14 solicitation"), please provide the following information:**

- a. Please identify all persons who were involved and/or who had responsibility, including supervisory responsibility for writing, producing and/or distributing the September 14 solicitation and please specify each person's role.**

Craig Jones was responsible for implementing and managing the details of the October 12 event. Dee Ertukel, Northern California Finance Director, was his immediate supervisor and had ultimate responsibility for the event. The initial letter was drafted by Craig Jones and approved by Dee Ertukel. The Committee believes that the letter used was either based on a sample DSCC letter previously used by the Committee or provided by the DSCC in its packet of general information regarding the tally.

- b. Please state the total number of September 14 solicitations mailed or otherwise distributed; what was the source of the distribution list?**

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The Committee does not have records regarding the number of September 14 solicitations mailed. To the best of the recollection of Committee staff, the Committee targeted any past contributor who was from the Jewish community and who had previously given more than \$500. The campaign sent out two solicitation letters. The first letter sent out was a sponsor letter for the event (names listed on the invitation). This was sent to any past contributor from the Jewish community who had given more than \$500. The second letter was an invitation to the event. This letter was also sent to people outside of the Jewish community, including those who had given a large contribution and who were believed able to contribute additional funds.

- c. **Of those solicited, how many persons had given the maximum limit to the Feinstein campaign?**

The Committee does not have records reflecting the answer to this question.

- d. **Please describe in full and complete detail how the Feinstein campaign determined to whom the September 14 solicitation would be mailed or otherwise distributed. Was a person's status as a "maxed" out contributor to the Feinstein campaign a factor in being included on the distribution list?**

For this event, the Feinstein campaign primarily targeted members of the Bay Area Jewish Community. As stated previously in response to questions 5. d. and 6. b., there were a variety of factors used in identifying possible invitees, including the fact that an individual had a history of contributing to the Senator's campaigns, had previously contributed to the DSCC, had made a large contribution to the Committee or maxed-out, or were actively involved in the Jewish community.

- e. **Please state whether the Feinstein campaign produced and distributed more than one version of the September 14 solicitation. If so, identify and produce a copy of each.**

Other than as stated in response to question 6. b., there was only one version of the September 14 solicitation.

- f. **Identify and produce a copy of all documents that accompanied the September 14, solicitation.**

Attached is a copy of the response card which accompanied the September 14 solicitation.

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- g. Please identify each person who attended the October 12, 1992 fundraising reception, as described in the September 14 solicitation.**

The Feinstein campaign is unable to identify each person who attended the fundraising event on October 12, 1992.

- h. Please state the total number of tallied contributions made in response to the September 14 solicitation and/or in conjunction with the October 12 fundraiser, the amount of each such tallied contribution and the identity of each contributor who made a tallied contribution.**

The Committee does not have records reflecting the information requested in this question.

- i. Please state the total number of non-tallied contributions made in response to the September 14 solicitation and/or in conjunction with the October 12 fundraiser, the amount of each such tallied contribution and the identity of the contributor who made a non-tallied contribution.**

The total number of non-tallied contributions was \$20,300. Attached is a record from the Feinstein campaign which lists the names of individuals who were invited to the October 12 event and who made a non-tallied contribution. The list provides the name of the contributor, the date of receipt, the date of deposit and the amount of the contribution.

- 7. Did the DSCC draft, prepare, supply or otherwise participate in the production of any solicitation issued by the Feinstein campaign that referred to the tally program?**

Yes. The DSCC provided sample letters and an information sheet to the campaign explaining the tally program. The language from these samples was used by campaign staff in drafting letters which solicited contributions for the DSCC. Furthermore, it was the general policy of the Feinstein campaign to send all letters and solicitations to the DSCC for approval before being mailed or distributed. All solicitations were to be revised according to DSCC directions.

- 8. If the answer to interrogatory number 7 is in the affirmative:**

- a. Please identify and produce a copy of each such solicitation and/or draft solicitation provided by the DSCC.**

The Commission has copies of the solicitation letters for the August 27 and October 12 events. The Committee believes these were reviewed by the DSCC. Other than as

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provided in response to Document Request No. 2, the Committee could not locate copies of other materials, such as drafts, provided by the DSCC.

- b. For each such solicitation, identify each and every person who was involved in drafting or preparing the solicitation and describe the nature of each person's involvement.**

The Committee is unable to identify each and every person who was involved in drafting or preparing each solicitation. The activities in question occurred 2 1/2 years ago. It was the general policy of the Feinstein campaign for each solicitation to be reviewed and approved by the Finance Director of the either the San Francisco office (Tricia Riffenburgh) or the Los Angeles office (Dee Ertukel), according to where the event was held or the area of distribution. It was the Committee's policy to forward the final draft of each solicitation to the DSCC for approval. The Committee believes that this generally occurred.

It was the understanding of the finance directors and those staff members under their supervision that they were to revise any solicitation according to DSCC instructions before mailing. In all instances, the Committee staff followed the general and specific instructions of the DSCC regarding all communications and solicitations regarding the tally.

- 9. Please state whether the Feinstein campaign sent different solicitations to contributors who had contributed the statutory maximum to the Feinstein campaign and to contributors who had not. If so, please describe in full and complete detail how or in what ways they differed.**

The Feinstein campaign did not send out different solicitations to those contributors who had given a maximum contribution and to those who had not.

- 10. If the answer to interrogatory number 9 is in the affirmative, please identify and produce a copy of each solicitation sent to those contributors who had contributed the statutory maximum to the Feinstein campaign.**

None.

- 11. Please state the date and amount of contributions to the DSCC that were tallied for the Feinstein campaign.**

The Feinstein campaign is not certain as to the date and amount of contributions to the DSCC that were tallied to the Feinstein campaign. The campaign did not keep official records of this information because they relied upon DSCC to keep records and listings. Furthermore, the Feinstein campaign did not verify this information, but instead assumed that it was accurate.

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Periodically, the Committee would receive tally reports from the DSCC. To the extent that copies of these were maintained in the Committee's files, the Committee has provided them in response to the Request for Production of Documents.

**12. Please describe, in full and complete detail, how the Feinstein campaign recorded, memorialized, or otherwise kept records of the amount of contributions to the DSCC that were tallied for the Feinstein campaign and please provide a copy of all such documents memorializing or recording the amount of tallied.**

There was no formal system used by the Committee for recording DSCC contributions. Individuals from the Feinstein campaign would occasionally draft informal pledge sheets. These were names of individuals who had promised contributions to the DSCC. However, it was not the policy of the Feinstein committee to follow-up to see if the campaign had actually been credited with these contribution amounts nor was there a database containing this information.

Most informal records kept by the Committee staff no longer exist. To the extent that the Committee has located any such records in its files, they are attached as an Exhibit to the answer to this question.

**13. Please describe, in full and complete detail, how the DSCC advised the Feinstein campaign of the amount of contributions to the DSCC that were tallied for the Feinstein campaign.**

The DSCC would send periodic tally sheet reports listing all contributions tallied to the Feinstein campaign. These reports listed the name of the donor, the date of receipt of the contribution and the amount of the contribution. The reports were not sent to the Committee on any regular basis, and indeed, in some instances, the Committee would attempt to obtain the information from the DSCC staff and it would not be forthcoming until some days or weeks later.

**14. Please describe, in full and complete detail, what the Feinstein campaign communicated to potential contributors about the DSCC's "tally sheet program" or the option of "tallying" a contribution to the DSCC for the Feinstein campaign, and the method(s) by which the information was communicated.**

It was the firm policy of the Feinstein Committee to follow the instructions of the DSCC regarding the tally program. The staff and consultants were all advised that it was the Committee's policy to comply in all respects with the guidance provided by the DSCC and to follow the precise formulation of the DSCC in describing the tally to any potential contributor. To the best of the Committee's recollection and belief, that guidance was routinely followed.

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In all communications regarding the tally, the Committee staff made clear to the contributors that contributions to the tally were not earmarked for the Feinstein campaign. Potential contributors were advised of the numerous factors utilized by the DSCC in making decisions regarding coordinated expenditures. These factors, stated previously, included the winnability of the race; whether the candidate had a serious challenger; whether the candidate had been successful in his or her own campaign fundraising; whether the candidate had assisted the DSCC in its fundraising efforts; and whether the DSCC had other expenditures of a higher priority or need. Of course, it was also communicated to potential DSCC contributors that the DSCC would be unable to assist all the Democratic campaigns to the maximum extent if there were insufficient funds available.

The information to potential contributors was communicated during telephone conversations following the guidance provided by the DSCC and in solicitations to DSCC events as described previously.

An information sheet on the DSCC reviewed by the DSCC often accompanied any mailings by the Committee, such as solicitations. That sheet was produced in response to Document Request No 1.

**15. Please state whether you contend that tallied contributions are not earmarked contributions, as defined and regulated by 2 U.S.C. §441(a)(8) and the governing regulations. If you so contend:**

**a. Please state and describe in full and complete detail each and every fact which supports this contention.**

The Feinstein Committee contends that tallied contributions were not in any way earmarked contributions within the meaning of 2 U.S.C. §441a(a)(8) and the Commission's regulations. Under those regulations, contributions are earmarked only when there is a "designation", "instruction" or "encumbrance" which "**results**" in a contribution being spent on behalf of a particular candidate. 11 C.F.R. § 110.6.

The Committee understood at all times that the contributions credited to the Feinstein tally were not earmarked for the Committee and the Committee followed the DSCC's instructions in this regard meticulously.

The facts that support this contention include the following:

a. The Committee followed the DSCC instructions in this regard.

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b. Contributors were specifically informed that the amount of funds tallied to the benefit of Senator Feinstein was only one factor used by the DSCC to determine the amount of coordinated expenditures.

c. All checks forwarded to the DSCC for the tally were made out to the DSCC and were in no way restricted for use on behalf of Senator Feinstein.

d. In fact, to the best of the information available to the Committee, the amount of coordinated expenditures made by the DSCC on behalf of Senator Feinstein was not equal to the amount of funds tallied to her benefit.

e. The Committee had no control over the expenditures made by the DSCC. Indeed, there were instances in which the Committee presented bills to the DSCC requesting that they pay them as coordinated expenditures and the DSCC refused to do so.


f. The expression of intent of contributors that contributions be tallied to Senator Feinstein did not in any way **result** in expenditures on her behalf as required under the regulations for earmarked contributions.

**b. Please identify and produce each and every document which you contend supports this contention.**

The Committee contends that all of the documents produced in response to this subpoena and particularly those in response to Document Request Nos. 1, 2 and 3 support this contention.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2<sup>nd</sup> day of February, 1995.

  
Michael J. Barrett  
Treasurer

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## **Interrogatories and Requests for Documents**

MUR 3620

- 5. f. Copy of the response card that accompanied the August 9 solicitation.
- 6. f. Copy of the response card that accompanied the September 14 solicitation.
- 6. i. Copy of "Contributions by Event, Detail Report" dated October 12th.
- 12. Copies of informal records kept by the Feinstein campaign

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**Document Responsive to Interrogatory 5. f.**

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**RICHARD H. SHAW, M.D.**

4095  
18-21/1220

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*Dem. Senatorial Campaign Committee* \$ 1000.00  
*one thousand 00/100*

**First Interstate Bank**  
First Interstate Bank of California #211  
16833 Ventura Boulevard  
P.O. Box 347  
Encino, CA 91426-0347

*For Dianne Feinstein*

# FEINSTEIN FOR U.S. SENATE

I/We will attend the evening with Senator Bensten.

Enclosed is my check for:

\$1,000 \$5,000 \$10,000 \$20,000

I/We support Dianne, but cannot attend.

Enclosed is my check for \$ 1000

Please make check payable to Democratic Senatorial Campaign Committee ("Dianne Feinstein's account" in the memo section).

Name *RICHARD H. SHAW M.D.*  
FED ID Number (if PAC)

Address *17410 SUMMIT DR.*

City *ENCINO CA 91314*  
State/Zip

The Following Information is Required by the FEC:

Occupation *PHYSICIAN*

Employer *SELF*

For additional information please call:  
Tricia Riffenburgh (310) 914-0660

Political contributions are not tax deductible. Corporate checks are not allowed.

(TD # C00041366 Tom Lehner, Treasurer.)

Authorized and paid for by the  
Democratic Senatorial Campaign Committee.



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**Document Responsive to Interrogatory 6. f.**

9 5 0 4 3 6 9 0 4 5 8

You are cordially invited  
to join us in honoring

**DIANNE FEINSTEIN**

Candidate for the  
United States Senate

Reception  
Monday, October 12th  
5:30 - 7:30pm

At the home of  
**DICK & SUE WOLLACK**  
3464 Clay Street  
San Francisco

RSVP Craig Jones 415/705-8700 • Response Card Enclosed

Oct.

I am honored to be a member of  
The Host Committee for the  
Jewish Community Fundraiser  
Honoring  
Dianne Feinstein  
on October 12, 1992

Please reserve a space in my name on the  
invitation as a:

**BENEFACTOR:**

☐ Enclosed is my check for \$5,000  
(payable to the "Democratic  
Senatorial Campaign Committee"  
marked for Dianne's tally)

OR

☐ I pledge to raise \$5,000

**PATRON:**

☐ Enclosed is my check for \$2,500  
(payable to the "Democratic  
Senatorial Campaign Committee"  
marked for Dianne's tally)

OR

☐ I pledge to raise \$2,500

**SPONSOR:**

☐ Enclosed is my check for \$1,000  
(payable to "Feinstein for Senate")

OR

☐ I pledge to raise \$1,000

Name: \_\_\_\_\_

Occupation: \_\_\_\_\_

Employer: \_\_\_\_\_

Political Contributions are not tax deductible  
Corporate Checks are not accepted  
(FEC ID C00250530, Michael Barrett, Treasurer)

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**Document Responsive to Interrogatory 6. i.**



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**Document Responsive to Interrogatory 12.**

FEB 3 11 13 AM '95

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )

Feinstein for Senate Committee )  
and Michael J. Barrett, as )  
Treasurer )

MUR 3620

**RESPONSE OF FEINSTEIN FOR SENATE CAMPAIGN AND  
MICHAEL J. BARRETT, AS TREASURER, TO REQUEST FOR  
PRODUCTION OF DOCUMENTS**

1. Please provide a copy of each and every version of every solicitation, mailing, or other document that the Feinstein campaign sent to potential contributors in connection with the 1992 general election campaign that refers to the tally program or that discusses or describes the option of tallying a contribution for the Feinstein campaign's tally account.

1.	10/19/92 Event	Invitation Letter	(9/17/92)	1 page
2.	10/19/92 Event	Sample Reception Invite	(9/19/92)	1 page
3.	PAC solicitation	Letter	not dated	1 page
4.	Letter to Leonard Rabinowitz From John Plaxco		(7/20/92)	1 page
5.	Letter to Gary Cypres From Carol Aminoff		(8/5/92)	1 page
6.	Letter to Jim Odom From Dianne Feinstein		(8/5/92)	1 page
7.	Letter to Peter Gold From Carol Aminoff		(8/5/92)	1 page
8.	Letter to Maxwell Salter From Carol Aminoff		(8/5/92)	1 page

- |     |   |           |        |
|-----|---|-----------|--------|
| 9.  | Letter to Daniel Garcia<br>From Carol Aminoff | (8/6/92)  | 1 page |
| 10. | Letter to Dave Berry<br>From John Plaxco      | (3/25/92) | 1 page |

2. Please provide a copy of each and every memorandum, letter, or other document that the DSCC sent to the Feinstein campaign explaining and/or concerning the tally sheet program.

1. Memo to all 1992 Democratic Senatorial Candidates
2. Memo from Robert Bauer, "Talking Points"

3. Please provide a copy of all documents pertaining to the tally sheet program, including, but not limited to:

a. any and all agreements between the DSCC and the Feinstein campaign;

none

b. correspondence between the DSCC and the Feinstein campaign;

- |    |  |            |        |
|----|--|------------|--------|
| 1. | Letter to Feinstein<br>From Chuck Robb | (9/10/92)  | 1 page |
| 2. | Letter to Feinstein<br>From Chuck Robb | (9/29/92)  | 1 page |
| 3. | Memo to Dee<br>From Margaret Sherry    | (10/16/92) | 1 page |

c. documents from the DSCC advising the Feinstein campaign of the amount of contributions to the DSCC tallied for Feinstein campaign;

- |    |   |         |
|----|---|---------|
| 1. | Year to Date Tally through 2/ 7/92                      | 2 pages |
| 2. | Year to Date Tally- Memo dated 8/10/92 (top sheet only) | 1 page  |
| 3. | Year to Date Tally- Memo dated 8/10/92                  | 3 pages |

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- |    |   |          |
|----|---|----------|
| 4. | Year to Date Tally- Memo dated 9/2/92         | 3 pages  |
| 5. | Year to Date Tally- Memo dated 9/12/92        | 4 pages  |
| 6. | Year to Date Tally- Memo dated 9/29/92        | 5 pages  |
| 7. | DSCC Fax Dated 9/30/92- Feinstein/Boxer Event | 3 pages  |
| 8. | 1992 DSCC Report-11/10/92                     | 35 pages |

**d. telephone memorandum and/or other written memoranda pertaining to the tally program and/or its implementation;**

none

**e. letters or sample letters soliciting tallied contributions;**

see documents produced under request #1

**f. other documents or sample documents soliciting tallied contributions;**

none

**g. telephone scripts for calls to contributors; and**

none

**h. thank-you letters or sample thank-you letters sent to contributors.**

none

**4. Please provide a copy of each and every document the DSCC sent to the Feinstein campaign relating to the amount of coordinated party expenditures the DSCC had spent or had determined to spend on behalf of the Feinstein campaign.**

none

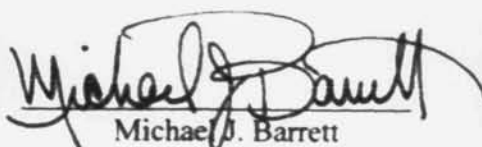
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5. Please provide a copy of all documents prepared by the Feinstein campaign relating to or discussing the amount of coordinated party expenditures to be spent by the DSCC on behalf of the Feinstein campaign.

none

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2<sup>nd</sup> day of February, 1995.

  
Michael J. Barrett  
Treasurer

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1.



OFFICE OF  
DIANNE FEINSTEIN  
909 MONTGOMERY STREET, SUITE 400  
SAN FRANCISCO, CA 94133  
TELEPHONE: (415) 433-1333

September 14, 1992

VIA FAX

Ms. Susan Lowenberg  
44 Montgomery Street, Suite 3520  
San Francisco, CA 94104

Dear Susan:

Please join me and my special guest, United States Senator Bill Bradley, for a fundraising dinner on Saturday, September 19, 1992 at 7:30 p.m. The dinner will be held at The Bankers Club Board Room, Bank of America Building, 555 California Street, 52nd Floor in San Francisco.

Senator Bradley serves on the Senate Finance Committee, and has been a strong advocate for business. He also serves on the Energy and Natural Resources Committee, the Special Committee on Aging and the Select Committee on Intelligence.

Senator Bradley has graciously agreed to help us raise money for my account with the Democratic Senatorial Campaign Committee. He is joined by Bill and Sally Hambrecht, Warren Hellman, George Marcus, Robert McCarthy, Sandy and Jeanne Robertson, Herb and Marion Sandler, Philip Schaefer, and William and Ellen Tauscher as Dinner Co-Chairs.


The DSCC is a Washington D.C. based group set up by U.S. Senators in the Democratic Party to help raise money and support for Democratic U.S. Senate candidates throughout the country. They can accept personal contributions of up to \$20,000 in a calendar year (and within an individual's \$25,000 yearly federal contribution limit). Your contribution to the DSCC can be credited to the Dianne Feinstein account.

I hope you will consider joining Senator Bradley and myself on September 19th and making a generous contribution to the DSCC. John Seymour will receive the maximum of \$2.5 million from the Republican Senatorial Campaign Committee. I am hopeful that this evening will be a major fundraising event for my account with the DSCC.

For those of you who have already maxed out to my campaign, the DSCC tally is an avenue through which you can offer more support. For further information regarding your donation, please call Dee Ertukel or Cathleen Conmy at (415) 705-8760.

I look forward to seeing you on the 19th.

Warmest regards,

  
Dianne Feinstein

Paid for and authorized by Feinstein for Senate Committee  
(Michael J. Barrett, Treasurer)

# SAMPLE INVITATION - RECEPTION

## DIANNE FEINSTEIN

CANDIDATE FOR THE U.S. SENATE

Reception, Saturday September 19, 1992

☐ I will be delighted to attend. Please make \_\_\_\_\_ reservation(s) at \$1,000 per person or \$5,000 per PAC. Enclosed is my check in the amount of \$\_\_\_\_\_.

☐ I am unable to attend, but want to support Dianne's campaign. Enclosed is my contribution of \$\_\_\_\_\_.

For more information please call Lowell Gibbs at 705-8763.

Please make checks payable to "Feinstein for Senate" (FEC ID #C00250530, Michael J. Barrett, Treasurer). If a couple wishes each to contribute on a joint account check, each must sign the check.

Name \_\_\_\_\_  
Fec ID# (if PAC) \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Occupation \_\_\_\_\_ Employer (indicate if self-employed) \_\_\_\_\_

Political Contributions are not tax deductible. Corporate checks are not allowed. An individual may contribute up to \$1,000 for the general election.

 Paid for and authorized by Feinstein for Senate

N00067

Richard Blum, Bill & Sally Hambrecht,  
Warren Hellman, George M. Marcus, Larry & Kathy Nibbi,  
Sandy & Jeanne Robertson, Herb & Marion Sandler,  
William & Ellen Tauscher.

Cordially invite you to a reception honoring

## DIANNE FEINSTEIN

CANDIDATE FOR U.S. SENATE

WITH FEATURED SPEAKER

## SENATOR BILL BRADLEY

Democrat - New Jersey

AND SPECIAL GUESTS

## KATHLEEN BROWN

California State Treasurer

## JOHN GARAMENDI

California Insurance Commissioner

Saturday, September 19, 1992  
Four Seasons Clift Hotel, 15th floor, Spanish Suite  
495 Geary Street, San Francisco

Hors d'oeuvres and Cocktails  
5:30 - 7:30 pm

RSVP Lowell Gibbs  
415/705-8763

9 5 0 4 3 6 9 0 4 6 7

SENATOR BILL BRADLEY  
DSCC DINNER  
SEPTEMBER 10, 1992

\_\_\_\_\_ I am delighted to attend. Please reserve \_\_\_\_\_ ticket(s) at:  
☐ \$2,500    ☐ \$5,000    ☐ Other

\_\_\_\_\_ Sorry, we cannot attend, but support your efforts and you have my vote.  
Enclosed is my contribution of \$ \_\_\_\_\_.

Please make checks payable to "Democratic Senatorial Campaign Committee", with  
Dianne Feinstein's tally indicated.

(over, please)

Please complete information below.

Name \_\_\_\_\_ FEC. ID. Number (if P.A.C.) \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Phone: Business \_\_\_\_\_ Home \_\_\_\_\_  
Occupation \_\_\_\_\_ Employer (indicate if self-employed) \_\_\_\_\_

Political contributions are not tax deductible.

Corporate checks are not allowed. A contributor may give up to \$20,000 to the D.S.C.C., within the \$25,000 individual contribution limit. Paid for and authorized by the Feinstein for Senate Committee, (FEC #C00250630, Michael J. Barrett, Treasurer).

For more information please call Cathleen Conmy at 415/705-8722.

N00073

Feinstein for US Senate  
909 Montgomery Street, Suite 202  
San Francisco, CA 94133

9504360438



As you know, Dianne Feinstein had a major victory in the California primary, June 2nd. She will become one of the first Jewish women in the history of our nation to have an opportunity to win election to the U.S. Senate.

Dianne needs and deserves your maximum support. She is an ardent proponent of a strong Israel within secure borders. She supports loan guarantees without pre-conditions, and she advocates foreign aid.

As you are aware, the U.S./Israel relationship has deteriorated considerably during the past four years of the Bush administration. We need strong leaders in the Senate to curb the erosion of support for America's only democratic Middle Eastern ally.

Dianne pledges to be such a leader. She is committed to make Israel a top of the agenda item when she gets to the Senate. Dianne will be much more than a vote, she will be a voice, and through her, the concerns of the American Jewish Community will be addressed.

Dianne is committed to vote to override any presidential veto of legislation that enhances Israel's strength or security.

In order for Dianne to win in November, the support of the National Jewish Community is essential.

Your PAC can give \$10,000 to Dianne's campaign. \$5,000 retroactively for the primary, and \$5,000 for the general election.

We are facing a very tough general election campaign against appointed Senator John Seymour. Some say that this appointed Senator has given assurances that he is pro-Israel. We believe that his primary loyalties lie with George Bush and the questionable Bush Middle East agenda. Dianne Feinstein will be an independent voice for a strong Israel - a voice that will not be subject to pressure from this or any president.

The rehabilitation of the U.S./Israel relationship is a high priority in the American Jewish Community. We need a forceful, bright and articulate Senator from California to advance that agenda.

We want to remind you that the Senator who represents California - the 6th largest economy in the world will be very visible, and when that person also has a strong pro-Israel agenda, as Dianne Feinstein does, it is a necessity that our community show its support.

Dianne has entered the general election with a deficit, creating a window of opportunity in which she can still accept primary money. We hope you will consider "maxing out" to Dianne with \$5,000 for the primary and a separate check of \$5,000 for the general.

In supporting Dianne Feinstein we are investing in our future.



TR

July 20, 1992

Transmitted by facsimile to: (310) 271-2717

Leonard Rabinowitz  
9951 Beverly Grove Drive  
Beverly Hills, CA 90210

Dear Leonard,

It was a pleasure talking with you today, and I want you to know how much we appreciate your interest in the campaign.

As we discussed, the Democratic Senatorial Campaign Committee (DSCC), by federal election law is allowed to contribute \$2.5 million to Dianne's campaign for U.S. Senate. By our assisting them in raising this money, and crediting monies raised to Dianne's tally with the DSCC, we help to insure their support. Individuals may contribute up to \$20,000 to the DSCC in a calendar year. However, an individual is limited to a total of \$25,000 to all candidates for federal office in an election year.

If a contribution is made from a joint account, two individuals may contribute \$40,000 to the DSCC. The check must have the names of both individuals on the account as well as the signatures of both the individuals. Please make the check payable to: "Democratic Senatorial Campaign Committee," and indicate in the memo section of the check: "credit to Dianne Feinstein's tally."

Leonard, on behalf of our entire campaign, I want to thank you for your generosity. If you will have your office contact me at (310) 914-0660 when the check is ready, I will be happy to send a messenger to pick it up. If you have any questions, please do not hesitate to call.

Warm regards,

John L. Plaxco  
Finance Director

909 Montgomery Street  
Suite 404  
San Francisco, CA 94133  
415 433-1100 Fax 415-3211



Consistent for Senate Committee: F T C L D A 00250530

11355 West Olympic Boulevard  
Suite 510  
Los Angeles, CA 90064  
310 914-0660 Fax 914-0668

950436904 / 1  
August 5, 1992

• Mr. Gary Cypres  
400 South Hope Street  
Los Angeles, CA 90071

Dear Gary:

Thanks for the wonderful conversation today. Please give my regards to your mother-in-law. Gary, the Scopus dinner in San Francisco on September 8th is on Dianne's calendar. It is not definite at the moment, because of other requests, however, I spoke with Dianne and told her that you would be there and of your involvement with Hebrew University and she is going to try to make a definite commitment to attend.

I'm not sure what the seating arrangements at the event will be, but perhaps she could sit with you.

I am enclosing a paragraph on the DSCC. I know you are familiar with it as a vehicle for plus giving. If you choose to do this, and I fervently hope you will, please send a letter along with your check indicating that your contribution is to be tallied to Dianne Feinstein.

Gary, I also mentioned to you that we can still accept individual contributions up to \$1,000 for the primary deficit as well as contributions for the general. I hope you and your wife will consider this as well. Perhaps you might be willing to host a fundraiser or make a few calls on Dianne's behalf.

As I told you, we are going to win. We have an 18-20 point lead now. But to maintain that lead against a opponent as well financed as ours, we need to keep Dianne competitive in fundraising. Your help, advice and support will be very important to the campaign.

I look forward to meeting you, and to hearing from you about the Scopus dinner.

Thank you again on behalf of Dianne and myself for your willingness to help.

Best regards,

Carol Aminoff  
Senior Advisor to Dianne Feinstein





August 5, 1992

Jim Odom  
2400 Cypresswood Trail  
No. 814  
Arlington, TX 76014

Dear Jim,

Thank you so much for your contribution of \$100 to my tally with the Democratic Senatorial Campaign Committee.

Your continued friendship and support of my campaign for the United States Senate means so much to me. We have won an historic primary victory and now face the challenges of the general election. Our primary campaign was built on a solid foundation of ideas and we intend to build on these ideas throughout the general election.

Your generous contribution to the Democratic Senatorial Campaign Committee will play a crucial role in our success in the coming months of the campaign.

Again, thank you so very much for your support and faith in my candidacy. Please stay close, and send me your thoughts from time to time. I so look forward to serving you and our state in the U.S. Senate.

Warmest personal regards,



Dianne Feinstein

DF/cj

909 Montgomery Street  
Suite 202  
San Francisco, CA 94133  
415 433-1333 Fax 433-3213 or 705-8712

11355 West Olympic Boulevard  
Los Angeles, CA 90010  
310 914-0660 Fax 914-0688

★  
Paid for and authorized by  
Feinstein for Senate Committee F.E.C. I.D. C00250530

August 5, 1992

Mr. Peter Gold  
5 Beverly Park  
Beverly Hills, CA 90210

Dear Peter:

I enjoyed talking with you this morning. I'm sorry Dianne was unable to speak with you but I know she will call you when she is able. As of this afternoon the situation with her daughter is unchanged. They are trying to stop her labor and give the baby more time to mature.

I am enclosing a short paragraph on the DSCC. If you choose to contribute through the DSCC it is very important that you enclose a letter with your contribution indicating that it is meant for Dianne Feinstein's tally. I hope you will consider this as our campaign really needs the support.

As I told you, because we have a deficit from the primary we are able to accept individual contributions for the primary deficit of up to \$1,000 and contributions for the general campaign up to \$1,000. Perhaps you and your wife could do this as well.

Whatever you do, we will be deeply appreciative, and I want you to know that Dianne will be an outstanding and articulate voice when she gets to the Senate.

Dianne will want to call to thank you for your support and to hear your views on the campaign and the economy. I'll call your office to set up a convenient time.

Thank you so much for your interest.

Regards,

Carol Aminoff  
Senior Advisor to Dianne Feinstein

950436904/3

August 5, 1992

Maxwell Hilary Salter  
804 North Linden Drive  
Beverly Hills, CA 90210

Dear Sonny:

Dianne enjoyed her conversation with you, and wanted me to give you the details of Vicki Reynolds' event. It will be on August 17th at 6:00 p.m. at Vicki's home at 619 North Linden Drive. Dianne looks forward to seeing you there.

I am delighted that you want to help with the campaign. You are exactly the person I want Dianne to be in close contact with. She is very interested in receiving views on the economy and the U.S. Israel relationships and how she can specifically work to strengthen that relationship when she gets to the Senate. I am anxious that she have your views.

Sonny, I am enclosing a paragraph on the DSCC. I am sure you are familiar with it. It is a plus giving vehicle and your contribution can be tallied directly to Dianne if you so indicate. In addition, because we have a deficit from the primary, we are still able to take individual contributions for both the primary deficit and the general. In theory, (in my hopeful dreams) you and Janet could each give \$2,000 to Feinstein for U.S. Senate and you could give whatever remains of your federal limit to the DSCC for Dianne's tally.

Dianne will win this race. Depending on which poll you read, she is anywhere from 18 to 25 points ahead of her opponent. I can assure you, that when Dianne goes to the Senate she will be a superstar on Israel. She is brilliant and articulate and will do us all proud.

By the way, max out contributors to Dianne's campaign become members of her California Cabinet which has a lot of perks attached to it.

My best to Janet. Thanks so much for always being there when it's important.

Warm regards,

Carol Aminoff  
Senior Advisor To Dianne Feinstein

950436904/4

Carol Aminoff  
Senior Advisor to Dianne Feinstein

March 25, 1992

Mr. Dave Barry  
International Vice President  
Director, Region 15  
United Food and Commercial Workers  
6280 Manchester Blvd., Suite 300  
Buena Park, CA 90621

Dear Dave:

Your early support for Dianne's candidacy has been absolutely key to the continuing success of the Campaign. We want you to know how much we value your counsel and your help.

In view of your interest in the campaign, and your commitment to Dianne's victory, we thought you would want to know about the Democratic Senate Campaign Committee (DSCC) and what a vital role it will play in the coming weeks.

The DSCC is a national party committee set up by U.S. Senators in the Democratic Party to help raise money and support for Democratic U.S. Senate candidates throughout the country. It can accept donations from Federal PAC's of up to \$15,000 in a calendar year. The DSCC maintains a tally [a record] of how much money each candidate raises for the committee and after the primary election, allocates money to be spent on behalf of the nominees based on their fundraising records, among other considerations.

In other words, if you were to donate to the DSCC and indicate that your donation is to be credited to Dianne Feinstein's record with the DSCC, after Dianne wins the nomination of the Democratic Party on June 2, your contribution will be taken into consideration in support of the DSCC's determination of its allocation on behalf of Dianne.

If you have any questions about this process, or would like to discuss how you can maximize your own contribution by giving to the DSCC please call me.

Again, your help is what has built the momentum in the campaign so far and now we ask you to help us to victory on June 2nd. I will be in touch soon.

Sincerely,

John L. Plaxco

9-5-92 43690416

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2.





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 8, 1995

VIA FACSIMILE

John R. Wallace, Esq.  
Wallace, Creech, Sarda & Zaytoun, L.L.P.  
UGB Plaza  
3605 Glenwood Avenue, Suite 390  
Raleigh, NC 27612

RE: MUR 3620  
Sanford for Senate Committee and  
Alton Buck, as Treasurer

Dear Mr. Wallace:

On January 20, 1995, the Office of General Counsel received your letter and response to the Subpoena to Produce Documents and Order to Submit Written Answers submitted on behalf of the Sanford for Senate Committee and Alton Buck, as treasurer, ("Respondents"). As you know, your response failed to meet the deadline of December 14, 1994, which had been extended to that date from November 25, 1994, at your request. In addition to failing to meet this deadline by more than one month, your response was unverified and provided the Commission with no information and no documents.

In your letter dated January 18, 1995, you state that Senator Sanford "experienced severe health problems" during his 1992 campaign and, therefore, "his knowledge and recollection of the events and communication is negligible." Further, you state that the treasurer, Alton Buck, is "apparently in poor health." You also represent that "[d]uring the course of the campaign Mr. Buck maintained the treasury books and records of receipts and disbursements, but had no actual involvement in the management of the campaign." As committee treasurer, Mr. Buck is required to retain records pertaining to his duties for three years. Those records should provide at least some of the information that the Commission requires. Further, as I advised you in our telephone conversation on January 6, 1995, even if Senator Sanford and Mr. Buck do not have direct knowledge, the campaign manager and other staff members should be knowledgeable about these matters.

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Page 2

This Office reminds you that the Order and Subpoena instruct Respondents that:

If you cannot answer any of the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder. In addition, state what information or knowledge you have concerning the unanswered portion and describe the specific efforts made by you or anyone on your behalf to ascertain the information. Also, state as definitively as possible when you anticipate obtaining the information and supplementing your response.

It does not appear that Respondents have exhausted the opportunities and resources available to them for preparing adequate responses. Absent full compliance, the Commission may seek enforcement of its Order and Subpoena in U.S. District Court. In an effort to avoid litigation, this Office is willing to discuss with you an additional opportunity to respond fully to these discovery requests prior to the Commission taking further action. Upon receipt of this letter, please call either my co-counsel, Stephan Kline, or me at (202) 219-3690.

Sincerely,

  
Mary Ann Bumgarner  
Attorney

95043690419



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

VIA FACSIMILE

February 15, 1995

John R. Wallace, Esq.  
Wallace, Creech, Sarda & Zaytoun, L.L.P.  
UGB Plaza  
3605 Glenwood Avenue, Suite 390  
Raleigh, NC 27612

RE: MUR 3620  
Sanford for Senate  
Committee and Alton  
Buck, as Treasurer

Dear Mr. Wallace:

This letter is to confirm the agreement that we reached in our conversation of February 14, 1995, concerning your clients' supplemental response to the Commission's Subpoena to Produce Documents and Order to Submit Written Answers in the above-captioned matter. During our conversation, you stated that you were in the process of gathering information which would be responsive to the Order and Subpoena and intended to submit this information to the Commission. As agreed, your full and complete response is due by the close of business on February 28, 1995.

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

Sincerely,

*Mary Ann Bumgarner*  
Mary Ann Bumgarner  
Attorney

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## PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
607 FOURTEENTH STREET, N.W. WASHINGTON, D.C. 20005-2011  
TELEPHONE: (202) 628-6600 FACSIMILE: (202) 434-1690

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

FEB 13 11 53 AM '95

ROBERT F. BAUER  
(202) 434-1602

February 10, 1995

Via Facsimile (202) 219-3923

Mary Ann Bumgarner, Esquire  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W., Sixth Floor  
Washington, D.C. 20463

mur 3620

Dear Ms. Bumgarner:

Thank you for taking the time to meet with us Wednesday regarding the Commission's investigation into the Democratic Senatorial Campaign Committee's Tally Program. Please also thank your colleagues for their time as well.

This is to confirm that we have not yet produced all documents arguably responsive to the Commission's pending subpoena, in view of our objection to your office's decision to interview DSCC donors at this stage of your investigation. Per our mutual agreement, we will file an appropriate motion regarding these issues with the Commission no later than Thursday, February 16, 1995.

Finally, we seek clarification regarding what your office and its investigators intend to tell contacted donors regarding confidentiality. It is our strong position that your office may not lawfully tell donors that they are not to contact the DSCC or its attorneys regarding your discussions with them. Please confirm your position in this regard. If, as it appeared at our meeting, you are not inclined to disclose to us your position regarding confidentiality, please confirm that as well. We consider this issue of confidentiality one of utmost importance to the Committee's ability to protect its interests and those of its supporters.

Very truly yours,



Robert F. Bauer  
Marc E. Elias

MEE:dkg

[04005-0048 DA950400 003]



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

VIA FACSIMILE

February 15, 1995

Mr. Robert F. Bauer, Esquire  
Perkins Coie  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2011

RE: MUR 3620  
Democratic Senatorial  
Campaign Committee  
and Donald J. Foley, as  
treasurer

Dear Mr. Bauer:

This is in response to your letter dated February 10, 1995, in which you seek further clarification regarding what this Office intends to tell interviewees about the confidentiality of our investigation. As we told you in our meeting on February 8, 1995, concerning this subject, we cannot discuss the specifics of our investigation as it pertains to anyone who you do not represent in this matter -- viz., anyone other than the DSCC. As we further discussed and reiterate now, this investigation, as with all of the Commission's investigations, is being conducted pursuant to the restrictions of 2 U.S.C. § 437g(12)(A). This section provides that, absent a written waiver from the respondent, no investigation shall be made public. Because there has been no such waiver in this case, we must maintain the confidentiality of this investigation until this entire matter is closed. Further, as in any of the Commission's investigations, all interviewees are notified of the provisions of Section 437g(12)(A); they are not advised whom they may or may not contact.

This Office appreciates your concerns regarding the confidentiality of this matter and will present the motion you will be filing on February 16, 1995, to the Commission.

Sincerely,

Mary Ann Bumgarner  
Attorney

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# PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATION  
607 FOURTEENTH STREET, N.W. WASHINGTON, D.C. 20005-2011  
TELEPHONE: (202) 628-6600 FACSIMILE: (202) 434-1690

FEB 16 4 37 PM '95

February 16, 1995

Via Messenger

Lawrence M. Noble, Esquire  
General Counsel  
Federal Election Commission  
999 E Street, N.W., Sixth Floor  
Washington, D.C. 20463

FEB 17 10 27 AM '95

FEDERAL ELECTION  
COMMISSION  
OFFICE OF THE  
GENERAL COUNSEL

Re: MUR 3620

Dear Mr. Noble:

Enclosed for filing are the original and three copies of Democratic Senatorial Campaign Committee's Motion to Quash and to Suspend Interviews of Contributors. Courtesy copies are also being provided directly to each Commissioner. I have also enclosed an extra copy to be file-stamped and returned to me.

If you have any questions, please call me at (202) 434-1625. Thank you.

Sincerely,



Marc E. Elias

/dkg  
Enclosures

[04005-0048 DA950470.035]



BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

MUR 3620

FEB 17 10 27 AM '95

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF THE  
CLERK

**DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE'S  
MOTION TO QUASH AND TO  
SUSPEND INTERVIEWS OF CONTRIBUTORS**

Respondent Democratic Senatorial Campaign Committee ("DSCC") moves the Commission to quash the portion of its October 14, 1994, subpoena calling for the production of names of contributors to the DSCC who "tallied" their contributions to Senate candidates.<sup>1</sup> Respondent also moves the Commission to suspend its Office of General Counsel's ("OGC") practice of interviewing DSCC contributors regarding their tallying of contributions to Democratic Senate candidates.<sup>2</sup> As explained more fully below, both the objected to portion of the subpoena, as well as the practice of contacting contributors, is prohibited by the First Amendment to the United States Constitution.

**I. BACKGROUND**

The subject of the underlying dispute in this matter is the manner in which the DSCC exercised its spending authority under 2 U.S.C. § 441a(d). For a number of years, the DSCC

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<sup>1</sup>Respondent notes that this issue is being raised on this date following a meeting with and prior notice to the General Counsel's Office. A copy of the letters confirming this understanding are attached to this memorandum.

<sup>2</sup>Although not parties, Respondents Feinstein for Senate Committee and Abrams '92 Committee participated in a meeting with representatives of the OGC and expressed concerns that support this motion with respect to donor interviews affecting contributions to their candidates.

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has turned to its candidates to aid in raising the funds necessary to perform its statutory function under Section 441a(d). Under this system, known as the "tally" program, candidates were asked to assist the DSCC in raising funds that would later be expended pursuant to Section 441a(d). In return, the DSCC would consider the candidates' fundraising efforts in making Section 441a(d) expenditures. In order to track contributions raised by a given candidate, contributors were permitted to designate or "tally" their contribution to the candidate responsible for raising the funds.

As explained more fully in Respondent's January 23, 1995, answers to the Commission's interrogatories, the amount of money a candidate has tallied is only one of several factors used in making coordinated expenditures. Others include the "winnability" of the race, whether the candidate has a serious challenger, whether the candidate has been successful in his or her own campaign's fundraising, and whether the DSCC has other more pressing needs for the money. On several occasions, and most recently in response to the interrogatories and accompanying subpoena, DSCC provided clear and convincing evidence that tallied contributions are not "earmarked" and that DSCC staff take several measures to assure that both candidates and contributors understand the true nature of the tally program.

Despite this evidence, OGC has not only continued its investigation but has resorted to investigative tactics that are not only unnecessary, but are constitutionally prohibited under the circumstances of this case. Specifically, DSCC has learned that OGC has recently begun contacting contributors about their understanding of and involvement with the tally program. Presumably in order to effectuate this process, the outstanding subpoena calls for the production of lists identifying the contributors that tallied to each Democratic candidate during the 1992 election cycle. These investigative techniques threaten the associational and privacy rights of the DSCC and its contributors and are disrupting to a constitutionally protected relationship of party to members without any showing that they are required at this stage of the proceedings. DSCC and the candidate campaigns under investigation have shown

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a complete willingness to cooperate in this investigation by providing both information and documentation. Under settled case law, OGC is not entitled to maintain this investigative course until it has exhausted other, less intrusive investigative techniques and concludes that there is a strong likelihood that a violation of law has occurred.

## II. ARGUMENT

### A. **The First Amendment to the United States Constitution Prohibits OGC from Contacting DSCC Contributors and Compelling Production of Contributor Lists at This Time**

Any inquiry into the propriety of contributor contacts and subpoenaing contributor lists must begin with a recognition that "the activities that the FEC seeks to investigate differ profoundly in terms of constitutional significance from the activities that are generally the subject of investigation by other federal administrative agencies." FEC v. Florida For Kennedy Comm., 681 F.2d 1281, 1284 (11th Cir. 1982). The information gathered in a Commission investigation "is of a fundamentally different constitutional character from the commercial or financial data which forms the bread and butter of SEC or FTC investigations." FEC v. Machinists Non-Partisan Political League, 655 F.2d 380, 388 (D.C. Cir. 1981), cert. denied, 454 U.S. 897 (1981). Commission investigations necessarily involve the "real potential for chilling the free exercise of political speech and association guarded by the first amendment." Id.

Because of the "real potential" for chilling First Amendment freedoms, "the usual deference to the administration agency is not appropriate." FEC v. LaRouche Campaign, 817 F.2d 233, 234 (2d Cir. 1987). Instead, investigative techniques such as contacting contributors and subpoenaing contributor lists require "a more exacting scrutiny of the justification offered by the agency." Id. As the D.C. Circuit summarized in Machinists Non-Partisan, "the Commission's investigative authority warrants extra careful scrutiny from the court because the activities which the FEC normally investigates differ in terms of their constitutional significance from those which are of concern to other federal administrative agencies whose

authority relates to the regulation of corporate, commercial, or labor activities." 655 F.2d at 387.

It is well settled that in order to withstand the "extra-careful scrutiny," the Commission must demonstrate a compelling need to use invasive investigative techniques such as those proposed by OGC. United States v. Comley, 890 F.2d 539, 544 (1st Cir. 1989); Machinists Non-Partisan Political League, 655 F.2d at 389; see also NAACP v. Alabama, 357 U.S. 449, 463 (1958). Even absent evidence by the DSCC that these techniques will cause constitutional harm, the Commission "must make some showing of need for the material sought beyond its mere relevance to a proper investigation." FEC v. LaRouche Campaign, 817 F.2d at 234-35. However, DSCC can demonstrate constitutional harm that would result from these investigative techniques. A showing that the technique "will result in harassment of current members, a decline in new members, or other chilling of associational rights" suffices to meet this requirement. Comley, 890 F.2d at 544.

DSCC will suffer severe and irreparable harm from pursuit of these intrusive investigative techniques in three ways. First, contributor interviews will undoubtedly lead to a diminution in the number of current and prospective contributors willing to participate in the DSCC's contributor program. The Commission should not lose sight that it is the DSCC that must seek contributions from individuals and not the other way around. If a contribution to DSCC is perceived as the price of admission to a federal investigation, present and potential DSCC contributors will understandably lose interest in this association.

Second, the Commission presumably recognizes that in the course of interviewing these contributors, the question of why an individual chose to "tally" to a given candidate must directly or by implication arise. In fact, determining a contributor's motivation or impetus to tally his or her contribution to a given candidate is presumably the central purpose OGC has for conducting these interviews. Where the Commission claims a concern with "earmarking," a contributor may perceive an inquiry into the choice of candidate, or the

reasons for contributing to the party which supports that candidate. Even where the courts have approved of contributor interviews, they have specifically disapproved of any inquiry into the political beliefs of contributors. See, e.g., Jones v. Unknown Agents of the FEC, 613 F.2d 864, 873 (D.C. Cir. 1979), cert. denied, 444 U.S. 1074 (1980) (holding such inquiries beyond the investigative mandate of the FEC).

Finally, in considering this matter, it is significant that designation and disclosure of tallied contributions are neither required by statute or regulation. Contributors to the DSCC recognize that the fact and amount of their contribution will be made a part of the public record. However, contributors have no similar understanding or expectation regarding their tally designation. In the past, the DSCC has had a number of contributors specifically express that they did not want the fact that they tallied their contribution to a given candidate known. Many of these contributors would not have tallied their contribution -- or in some instances, made contributions at all -- if they knew that their tally designation would later be disclosed beyond the DSCC,<sup>3</sup> much less be made part of a federal agency investigation. Interviews and production of contributor lists to the FEC would violate these contributors' associational and privacy rights and, in turn, would violate the rights of the DSCC as well.<sup>4</sup> In addition, these contributors, in particular, would be very unlikely to contribute to the DSCC again.

As noted above, even if the DSCC was unable to make any showing of harm, the OGC's investigative techniques would still be improper at this stage in the investigation. In

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<sup>3</sup>For this reason, even if the DSCC were to ever produce its tally donor lists, it could only do so under provisions that the lists would remain under seal and remain off of the public record.

<sup>4</sup>In addition, such interviews would violate Respondent's confidentiality rights. Commission regulations and federal law guarantee Respondent's right to have the investigation of this matter kept confidential. 2 U.S.C. 437g(a)(12); 11 C.F.R. § 111.21. By interviewing DSCC contributors regarding their decision to tally contributions, Commission investigators will necessarily violate Respondent's confidentiality rights. Any questioning regarding a contributor's beliefs, understandings or intentions regarding their tallied contribution will be a clear indication to that contributor that the Commission is investigating the DSCC's tally program. As such, these inquiries violate Respondent's confidentiality rights.



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**FEC v. LaRouche Campaign**, 817 F.2d at 234, the Second Circuit reversed the trial court's ruling that because the campaign had failed to show any likelihood of injury resulting from the Commission's investigative tactics, the Commission need only demonstrate that the information it sought was "relevant to the FEC's investigation." In so doing, the court stated that:

[w]hile it is true that the campaign's failure to make such a record means that the subpoenaed material is not immune from disclosure, the investigation and the subpoena nevertheless tread in an area rife with first amendment associational concerns. When such concerns appear, an administrative agency is not automatically entitled to obtain all material that may in some way be relevant to a proper investigation. Rather, where the disclosure sought will compromise the privacy of individual political associations, and hence risks a chilling of unencumbered associational choices, the agency must make some showing of need for the material sought beyond its mere relevance to a proper investigation.

Id. at 234-35 (emphasis added).

In this case, OGC has not made any showing of need beyond the mere convenience of conducting the investigation in a particular fashion. This is clearly demonstrated by the fact that OGC sought to subpoena the contributor lists prior to consideration of the extensive evidence in this matter produced by the parties and candidates. In fact, OGC began contacting contributors regarding interviews prior to having received interrogatory responses from the Abrams and Feinstein campaigns and only days after receiving a 25-page interrogatory response from the DSCC. The record makes clear that OGC began its investigation utilizing the challenged investigative techniques rather than through more traditional, less constitutionally harmful, methods. In short, OGC has not tailored its investigative techniques to minimize infringement on the First Amendment.

Respondent concedes that at some point, these challenged techniques might become necessary to the Commission's investigation so as to justify their extraordinary effect on the DSCC and its contributors. At that point, a balancing of Commission need versus constitutional harm would be appropriate. However, this matter is not anywhere near that point.



OGC should first exhaust investigative options that do not burden Respondent's constitutional rights. Only then should it consider moving to the next step.

### III. CONCLUSION

For the foregoing reasons, Respondent's motion to quash the Commission's subpoena for tally contributor lists and to halt OGC's interviewing of DSCC contributors regarding their tallied contributions should be granted.

Respectfully Submitted,



Robert F. Bauer  
Marc E. Elias  
PERKINS COIE  
Suite 800  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2011  
(202) 628-6600

Attorneys for Democratic Senatorial  
Campaign Committee

Dated: February 16, 1995

BEFORE THE FEDERAL ELECTION COMMISSION

**SENSITIVE**

In the Matter of )

Democratic Senatorial Campaign )  
Committee and Donald J. Foley, )  
as treasurer )

MUR 3620

**GENERAL COUNSEL'S REPORT**

**I. BACKGROUND**

On October 4, 1994, the Commission found there is reason to believe that contributors who responded to certain candidates' solicitations and made "tallied" contributions to the Democratic Senatorial Campaign Committee ("DSCC" or "Respondents") on behalf of those candidates made earmarked contributions. The Commission further found that there is reason to believe that the DSCC either: (1) failed to forward earmarked contributions within the applicable 10-day time limit, as set forth in 11 C.F.R. §§ 102.8 and 110.6(b)(2)(iii), and failed to report the original source and intended recipient to the Commission and to the intended recipient, as required by 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c)(1); or (2) if the contributions in question were passed through to the candidates in the form of coordinated party expenditures, that the DSCC failed to report the source of the contributions and the intended recipient to the Commission and to the intended recipient, in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c)(1).

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The Commission also issued a Subpoena To Produce Documents and Order To Submit Written Answers to Respondents. Attachment 1. Respondents requested an extension of time until January 23, 1995, in which to respond to the Subpoena and Order; this was granted. In the notification letter dated November 17, 1994, Respondents were specifically reminded that the "time for filing a motion to quash has passed and that this extension does not extend the deadline for filing such a motion."

On January 23, 1995, Respondents submitted an incomplete response<sup>1</sup> to the Subpoena and Order, but qualified it by stating that:

The Committee acknowledges its continuing obligation to identify and provide to the Commission additional information which may be located or become available, and it will supplement this submission with additional information which may still be located no later than February 10, 1995.

Attachment 2. At counsel's request, staff of this Office met with counsel for the DSCC on February 8, 1995. During that meeting, counsel once again confirmed that Respondents had not yet produced all of the documents responsive to the Subpoena and Order. Specifically, counsel stated that he had a DSCC donor list which he proposed to produce only if the Commission would

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1. In response to Interrogatory No. 10(a) and Production Request No. 5, Respondents failed to provide the names of the contributors who made tallied contributions to the DSCC during the 1992 election cycle, and the date and the amount of each tallied contribution. Because Respondents failed to label or organize the documents submitted in response to the Subpoena and Order, it is as yet unclear whether there was further non-compliance.

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agree to protect its use. We agreed that the DSCC would file an "appropriate motion" concerning the use of the donor list by February 16, 1995.

On that date, counsel for the DSCC did not file the motion that we had discussed, but, instead, submitted a motion entitled "Democratic Senatorial Campaign Committee's Motion to Quash and to Suspend Interviews of Contributors."<sup>2</sup> Attachment 3. As discussed below, this Office recommends that Respondents' motion to quash be denied because it is untimely and the Subpoena and Order are otherwise enforceable. Further, this Office recommends that the Commission deny the motion to suspend contributor interviews because they are clearly permitted by statute and integral to the investigation in this matter.

## II. DISCUSSION

### 1. DSCC's Arguments

The DSCC argues that the Commission should not yet be informally interviewing persons who appear to have made earmarked contributions and that the DSCC will not produce a

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2. Even though counsel did not specify which questions in the Subpoena and Order were the subject of the motion to quash, it appears that the motion is directed at Interrogatory No. 10(a) and Request for Production No. 5. Interrogatory No. 10(a) states: "For each and every Democratic Senate candidate [who participated in the tally sheet program during the 1992 general election cycle], please provide the following information:  
a. By candidate, please state the contributor's name, and the date and amount of each contribution made payable to the DSCC that was designated for that candidate's tally sheet." Request for Production No. 5 states: "For each Democratic Senate candidate who was designated for the tally sheet program, please provide a copy of all documents or accounting records which reflect the identities of the contributors and the dates and amounts of each contribution tallied for that candidate during the 1992 general election campaign."

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list of its donors who made tallied contributions. In support, the DSCC alleges generally that the "First Amendment to the United States Constitution prohibits OGC from contacting DSCC contributors and compelling production of contributor lists at this time." Attachment 3 at 3. Specifically, the DSCC contends that interviewing contributors "threaten[s] the associational and privacy rights of the DSCC and its contributors and [is] disrupting to a constitutionally protected relationship of party to members without any showing that [such interviews] are required at this stage of the proceedings." Id. at 2 (emphasis in original).

Respondents assert that informally interviewing contributors will harm the DSCC in three ways. Id. at 4-5. First, the contributor interviews will purportedly lead to a diminution in the number of contributors "willing to participate in the DSCC's contributor program." Id. at 4. Second, the interviews would allegedly lead to a prohibited inquiry into the political beliefs of contributors. Third, although contributors "recognize that the fact and amount of their contribution[s] will be made a part of the public record," they do not have a "similar understanding or expectation regarding their tally designation." Id. at 5. The DSCC contends that many would not have tallied their contributions or even given "if they knew that their tally designation would later be disclosed." Id. Finally, in a footnote, the DSCC argues that interviewing contributors violates its own right to confidentiality. Id. at n.4.

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Even if the DSCC cannot make a showing of harm, it argues in the alternative that interviewing contributors is still improper "at this stage in the investigation." Id. at 5. The DSCC concedes that contributor interviews "might become necessary," but, in its opinion, we are not at that stage because OGC began contacting contributors even prior to receiving responses to interrogatories. Apparently, the DSCC disagrees with the order of our investigation.

2. Motion to Quash

Respondents' motion to quash should be denied for several reasons. First, it should be denied because it is untimely by several months. Pursuant to 11 C.F.R. § 111.15(a), a motion to quash must be filed no later than 5 days after the date of receipt. Respondents received the Subpoena and Order on October 25, 1994; their motion to quash was submitted on February 16, 1995, at least 113 days after receipt. By letter dated October 28, 1994, counsel for Respondents requested an extension of time until January 23, 1995, "to respond to the Commission's Reason to Believe finding and interrogatories and requests for documents." Their request did not contemplate an extension of time to file a motion to quash. In fact, as noted above, this Office specifically reminded Respondents that the extension of time in which to respond to the Subpoena and Order did not extend the deadline for filing such a motion. At no time did Respondents request -- nor did this Office acquiesce to -- an extension of time in which to file a motion to quash. The untimely filing of Respondents' motion is, in and of itself,

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sufficient reason to deny it. Accordingly, this Office recommends that the Commission deny Respondents' motion to quash the Subpoena and Order as untimely filed.

In addition to being untimely filed, Respondents' motion fails substantively. It is well established that an administrative agency subpoena or order will be enforced so long as it was issued for a proper purpose, the information sought is relevant to the purpose, and the statutory procedures were observed. See United States v. Powell, 379 U.S. 48, 57-58 (1964); United States v. Morton Salt Co., 338 U.S. 632, 652 (1950); Federal Trade Commission v. Invention Submission Corp., 965 F.2d 1086, 1089 (D.C. Cir. 1992); Government of Territory of Guam v. Sea-Land Serv., 958 F.2d 1150, 1154-55 (D.C. Cir. 1992).

The interrogatories and requests for production of documents in this matter were issued for the investigation of possible violations of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 110.6(c)(1), 110.6(b)(2)(iii) and 102.8. It is the Commission's duty to enforce these provisions and, accordingly, the Subpoena and Order were issued for the proper purpose of investigating these possible violations. The questions propounded are also plainly relevant to the Commission's findings. Because we are investigating whether contributors earmarked their tallied contribution to the DSCC, it is clearly relevant to the investigation to identify the contributors who made tallied contributions. In fact, Respondents tacitly acknowledge that the information sought is relevant by arguing

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that the Commission must show more than its mere relevance to a proper investigation. Attachment 3 at 6.

To investigate a possible violation of the Federal Election Campaign Act of 1971, as amended, (the "Act"), the Commission need only determine, by an affirmative vote of at least four of its members, that there is "reason to believe" a violation has occurred. 2 U.S.C. § 437g(a)(2). Once this threshold is reached, the Act authorizes the Commission to conduct investigations into possible violations of the Act, see 2 U.S.C. § 437g(a)(2), and grants the Commission power to require any person to produce documentary evidence related to its investigation and to require written answers to questions. 2 U.S.C. §§ 437d(a)(1) and (3). In this matter, the Commission found reason to believe Respondents violated the Act and its regulations and issued the Subpoena and Order, pursuant to 2 U.S.C. §§ 437d(a)(1) and (3). There is no question, nor do Respondents contend otherwise, that the Commission properly observed the Act's statutory procedures in this matter. Based on the foregoing, the Subpoena and Order are proper and enforceable.

### 3. Motion to Suspend Interviews

Regarding contributor interviews, the DSCC has made no showing of a serious threat to the exercise of First Amendment rights that outweighs the substantial governmental interests in enforcing the Act. Buckley v. Valeo, 424 U.S. 1, 66 (1976). Respondents allege three instances of constitutional harm. First, Respondents contend that interviewing contributors will

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lead to a diminution in the number of contributors willing to participate in the DSCC's contributor program. This contention is highly speculative, and Respondents have failed to provide any evidence to support this conjecture. Moreover, the interviews are only conducted if the interviewee is willing to participate. Contrary to the suggestion of harassment, they are completely voluntary and scheduled in advance at the convenience of the interviewee.

Second, counsel argues that interviewing contributors would allegedly lead to a prohibited inquiry into the political beliefs of contributors. Besides having no standing to assert that argument on behalf of third party contributors whom counsel does not represent, the presumption is without any basis in law or fact. This Office has no intention nor is it necessary to inquire into the contributors' political beliefs.

Last, Respondents assert that contributors to the tally system often contributed with the understanding that their tallied contributions would be kept confidential. The focus of this investigation is to determine whether tallied contributions are earmarked. The contributions and the amounts are already on the public record. Even if the DSCC assured donors that their tallied contributions would be kept confidential, if those contributions are, in fact, earmarked, the law requires that they be reported as contributions to the candidate. 2 U.S.C. § 441a(a)(8). Furthermore, "[i]t is established that, when a person communicates information to a third party even on the understanding that the communication is confidential, he cannot

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object if the third party conveys that information or records thereof to law enforcement authorities." SEC v. Jerry T. O'Brien, Inc., 104 S. Ct. 2720, 2725 (1984).

Moreover, there is no question that the Commission may conduct field interviews as part of its investigative authority. For example, although the court took issue with the manner in which some interviews were conducted, the court in Jones v. Unknown Agents of the FEC, 613 F.2d 864, 873 (D.C. Cir. 1979), cert. denied, 444 U.S. 1074 (1980), determined that the only restriction on the scope of these interviews was inquiries into the political beliefs of the contributors. The court found that it was well within the investigatory power of the Commission to ask individuals how much was contributed; the source of the contribution; and a variety of questions concerning the individuals' affiliations, activities and financial relationships with organizations under investigation by the Commission. Id. at 872.

Accordingly, the DSCC has no legal basis for moving to stay contributors from voluntarily submitting to interviews.<sup>3</sup> As the

3. It is highly unlikely that the DSCC could prevail in enjoining the contributor interviews in court. In order to demonstrate its standing to sue to enjoin these interviews, the DSCC would have to satisfy both the constitutional and prudential aspects of the standing doctrine. Allen v. Wright, 468 U.S. 737, 751 (1984). "The formula for Article III standing has been much rehearsed. At bottom, standing requires (a) concrete injury to a legally-protected interest; (b) a causal connection between the asserted injury and the challenged conduct, such that the inquiry is fairly traceable to the challenged conduct and not the result of independent action by a third party not before the court; and (c) likelihood that the injury will be redressed by a favorable decision on the merits." Freedom Republicans v. Federal Election Commission, 13 F.3d 412, 415 (D.C. Cir. 1994). Based upon the record presented by the DSCC, it is very

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court noted even under the facts in Jones, "[a]lthough field interviews such as those that allegedly occurred here undoubtedly may discourage some political association, we cannot say here that this 'chill' states a constitutional claim." Id. at 878.

#### 4. DSCC's Right to Confidentiality

Finally, the DSCC raises concern for its own right to confidentiality in a footnote. As the DSCC has been previously advised, this investigation -- as with all of the Commission's investigations -- is being conducted pursuant to the restrictions of 2 U.S.C. § 437g(a)(12)(A). Attachment 3 at 9. This section provides that, absent a written waiver from the respondent, no investigation shall be made public. There has been no such waiver in this case. All interviewees are notified of the provisions of Section 437g(a)(12)(A).

The DSCC's position is clearly contrary to the statutory responsibility of the Commission and would, in effect, have the Commission's investigation proceed only at the direction of the respondents being investigated. Further, under the DSCC's logic, the Commission could never ask questions of non-respondent witnesses during its investigations. This is obviously not the intent of the Act, which allows the Commission

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(Footnote 3 continued from previous page)  
doubtful that it could satisfy the requirements of standing.



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significant flexibility in how it conducts its investigations. Cf. SEC v. Jerry T. O'Brien, Inc., 104 S. Ct. 2720 (1984) (holding that allowing SEC targets to object to subpoenas issued to third parties would unwarrantedly cast doubt upon and stultify the Commission's every investigatory move). In addition, Section 437g(a)(2) requires the Commission, once it has made a reason to believe determination, to conduct an investigation into the alleged violations "which may include a field investigation." Based on the foregoing, it is beyond question that the Commission may conduct field interviews of non-respondent witnesses during its investigations.

In sum, the Commission's Subpoena and Order clearly meet the requirements for enforcement; the informal interviews fall well within the Commission's broad grant of investigatory power, 2 U.S.C. § 437g(a)(2); and Respondents have made no showing of constitutional harm.

##### 5. First Amendment Concerns

Although we believe the Respondents have failed to do so, assuming, arguendo, that Respondents have made a showing that First Amendment concerns are implicated, the Commission's investigation is still constitutional. When a case implicates First Amendment concerns, "the agency must make some showing of need for the material sought beyond its mere relevance to a proper investigation" FEC v. Larouche Campaign, 817 F.2d 233, 234-35 (2nd Cir. 1987).

Relying primarily on the decision in FEC v. Larouche Campaign, supra, Respondents argue that subpoenaing a



contributor list and interviewing contributors are unconstitutional "tactics" because there "has been no showing of need beyond the mere convenience of conducting the investigation in a particular fashion." Attachment 3 at 6. Respondents' argument ignores not only the holding in that case, but the very nature of the violations being investigated.

Contrary to Respondents' assertion, the court's decision in Larouche clearly supports the constitutionality of subpoenaing contributor lists and interviewing contributors about their contributions. 817 F.2d at 235. In Larouche, the campaign was challenging both the constitutionality of the Commission's discovery requests and the investigation itself. Id. at 234. The Commission was investigating loans and contributions made to the campaign via credit cards. Although the court modified the subpoena concerning some questions about campaign workers, it specifically upheld the Commission's investigation of contributors -- including the Commission's request for the campaign's contributor list. Id. at 235. Based upon the nature of the violations being investigated, the court specifically found that the need for the information outweighed the possible infringement on the First Amendment: "Investigating such charges surely requires access to the list of contributors, who presumably can tell the FEC whether they did or did not make the claimed donations." Id.

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Similarly, the investigation of the possible violations in this case requires access to the contributors who made the tallied contributions. Put very simply, the crux of this investigation is whether tallied contributions are earmarked within the meaning of 11 C.F.R § 110.6(b)(1). The evidence at the reason to believe stage supported the finding that the requests for tallied contributions were, in fact, solicitations for earmarked contributions and that contributors who responded to the solicitations intended that their tallied contributions be earmarked for the designated candidate. All of the reason to believe findings against the DSCC stem from the finding that the contributors earmarked their tallied contributions. Consequently, investigating these violations requires that the Commission obtain information directly from the contributors who can tell the Commission whether they did or did not make earmarked contributions. FEC v. Larouche, 817 F.2d at 235.

For all the foregoing reasons, this Office recommends that the Commission deny Respondents' Motion to Quash and to Suspend Interviews of Contributors. Further, we recommend that the Commission authorize the Office of General Counsel to file a civil suit to enforce the Subpoena and Order absent full compliance within 10 days of receipt of notification of its decision.

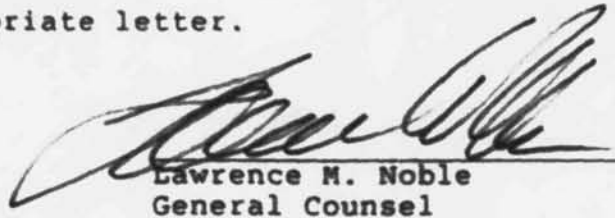
### III. RECOMMENDATIONS

1. Deny the Democratic Senatorial Campaign Committee's Motion to Quash and to Suspend Interviews of Contributors.

2. Authorize the Office of General Counsel to institute a civil action for subpoena enforcement in the United States District Court against the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, absent full compliance with the Subpoena and Order within 10 days of receipt of notification of the Commission's denial of Respondents' motion.

3. Approve the appropriate letter.

3/2/95  
Date

  
Lawrence M. Noble  
General Counsel

Attachments

1. Subpoena and Order
2. Cover letter from January 23, 1995 response
3. Motion to Quash

Staff assigned: Mary Ann Bumgarner  
Stephan O. Kline

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) MUR 3620  
Democratic Senatorial Campaign )  
Committee and Donald J. Foley, as )  
treasurer )

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on March 7, 1995, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 3620:

1. Deny the Democratic Senatorial Campaign Committee's Motion to Quash and to Suspend Interviews of Contributors.
2. Authorize the Office of General Counsel to institute a civil action for subpoena enforcement in the United States District Court against the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, absent full compliance with the Subpoena and Order within 10 days of receipt of notification of the Commission's denial of Respondents' motion.
3. Approve the appropriate letter as recommended in the General Counsel's memorandum dated March 2, 1995.

Attest:

3-8-95  
Date

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

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FEDERAL ELECTION COMMISSION  
WASHINGTON D.C. 20463

March 15, 1995

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Robert F. Bauer, Esquire  
Perkins Coie  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2011

RE: MUR 3620  
Democratic Senatorial  
Campaign Committee  
and Donald J. Foley, as  
treasurer

Dear Mr. Bauer:

On February 16, 1995, the Federal Election Commission received the "Democratic Senatorial Campaign Committee's Motion to Quash and to Suspend Interviews of Contributors" in the above-referenced matter. After considering your arguments in support of these motions, the Commission denied both of them on March 7, 1995.

Accordingly, full and complete responses to the Commission's Subpoena and Order must be submitted to the Office of the General Counsel within 10 days of your receipt of this letter. Specifically, the Respondents have failed to respond to Interrogatory No. 10(a) and Production Request No. 5. Interrogatory No. 10(a) asks that "For each and every Democratic Senate candidate identified in the response to interrogatory number 9, please provide the following information: By candidate, please state the contributor's name, and the date and the amount of each contribution made payable to the DSCC that was designated for that candidate's tally sheet." Production Request No. 5 requests that "For each Democratic Senate candidate who was designated for the tally sheet program, please provide a copy of all documents or accounting records which reflect the identities of the contributors and the dates and amounts of each contribution tallied for that candidate during the 1992 general election campaign."

In addition, it appears that you have not fully responded to other Requests for Production. Because you did not identify to which Requests the produced documents correspond, it is difficult to discern the extent to which Respondents have complied. This is also contrary to the instructions contained in the Subpoena and Order which state: "Please organize all

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Robert F. Bauer, Esquire

documents and label each group of documents to correspond with the specific Request for Production to which each document or group of documents pertains." Accordingly, when you file your supplemental response, please produce all of the documents responsive to the Requests for Production in accordance with the instructions contained in the Subpoena and Order.

If full and complete responses to the Commission's Subpoena and Order are not received within 10 days after your receipt of this letter, the Commission has authorized the Office of the General Counsel to file a civil suit in United States District Court to seek enforcement of the Subpoena and Order.

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

Sincerely,



Mary Ann Bumgarner  
Attorney

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JOHN R. WALLACE\*  
PAUL F. CREECH  
PETER J. SARDA  
ROBERT E. ZAYTOUN\*  
RICHARD P. NORDAN  
RICHARD T. FOUNTAIN, III  
PATRICIA L. WILSON MEDYNSKI

\* ALSO ADMITTED IN FLORIDA

WALLACE, CREECH, SARDA & ZAYTOUN, L.L.P.

ATTORNEYS AT LAW  
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RECEIVED  
FEDERAL ELECTION  
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FEB 28

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February 27, 1995

Mary Ann Bumgarner, Esq.  
Federal Election Commission  
Office of the General Counsel  
999 E. Street N.W.  
Washington, DC 20463

**VIA FEDERAL EXPRESS**

Re: MUR 3620

Terry Sanford for Senate Committee and Alton G.  
Buck as Treasurer, Respondents

Dear Ms. Bumgarner:

Enclosed please find Supplemental Response to Interrogatories and Requests for Production of Documents with attachment and the signed affidavit of Mr. A.M. Edwards.

I write in further response to your Interrogatories and Requests for Documents served upon the Sanford for Senate Committee.

As I indicated to you during the course of our several conversations, I have continued to explore matters raised by the discovery documents of the Commission. I am able now to provide some additional information in explanation of our inability to further respond.

The staff of the Sanford for Senate Committee in 1992 maintained offices in Raleigh, North Carolina. Those offices, in rented commercial office space, were occupied by a small paid staff and miscellaneous campaign volunteers. The campaign was managed by David Parker, who moved to Raleigh from western North Carolina for the campaign and has since returned. I have spoken to Mr. Parker regarding the organization of the campaign and campaign responsibilities. Of course, Mr. Parker had general oversight responsibilities with respect to fund raising as well as other activities but he was not directly involved in fund raising activities.

Fund raising activities and in particular, relations with the Democratic Senatorial Campaign Committee, were the province of Ms. Erica Payne. Ms. Payne began as a volunteer

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February 27, 1995  
Page 2

in the Sanford Committee offices shortly after graduation from college and despite her lack of experience was assigned to an array of fund raising activities including communication with the Democratic Senatorial Campaign Committee.

Ms. Payne advises me that due to her lack of experience, she relied on the DSCC. She does not recall the name of her contact at the DSCC, but she does recall that her contact at DSCC was a mid-level administrative employee. Ms. Payne did not establish or implement a fund raising plan but, at the request of Mr. Parker did attempt to respond to requests from DSCC for fund raising in behalf of the DSCC. Ms. Payne made no promises that any tally would directly benefit Senator Sanford.

It is the recollection of Ms. Payne that the DSCC conducted a single fund raising event honoring Senator George Mitchell at the home of a Greensboro, North Carolina Democrat and that Senator Sanford assisted in recruiting attendees to the event.

It is the specific recollection of Ms. Payne that few Sanford contributors contributed to the DSCC. In fact, it is true that the Sanford for Senate Committee had substantial fund raising difficulties of its own.

Ms. Payne was assisted in fund raising in September and October by Crawford Crenshaw. Mr. Crenshaw served the campaign as a consultant. Neither Ms. Payne nor Mr. Crenshaw have records responsive to the Request for Production.

In 1992, there were numerous nonfederal races in North Carolina in addition to the federal races. All nonjudicial candidates for statewide office appeared on the ballot in 1992 in North Carolina and there was substantial competition for campaign contributions. Furthermore, the Sanford Committee had in the 1986 election cycle adopted a more traditional style of campaign than many encountered in the 1980's and 1990's. That is, Senator Sanford in 1986, for example, made campaign visits to each of North Carolina's 100 counties. There was no well cultivated, computer maintained mailing list developed for the 1986 campaign that readily translated into a successful fund raising effort in

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1992. Of course, as I have earlier described, Senator Sanford suffered serious health problems during the course of the 1992 election cycle and his health difficulties prevented him from conducting in-person fund raising efforts.

I offer the foregoing to explain that the Sanford Committee was not particularly well positioned to assist the DSCC and was, in fact, much in need of assistance from the DSCC but unable to lend much assistance in response.

It is my recollection that the DSCC contributed substantially to the Sanford Committee. There was no comparable contribution to the DSCC by Sanford contributors.

As I have previously discussed with you, Senator Sanford after the 1992 Senate Campaign did not anticipate again running for public office. Therefore, the records maintained in the Raleigh offices of the Committee were not preserved in anticipation of future races and the office was quickly disassembled and campaign files destroyed and discarded. Mr. Parker does not maintain records of the sort sought by your Requests for Production. Ms. Payne advises me that she departed the Sanford Campaign immediately following the election to assist the Inaugural Committee and returned only after the closure of the office. Mr. Crawford Crenshaw, who assisted in the latter days of the campaign's fund raising efforts, departed without records of his fund raising efforts.

I have earlier indicated to you that Mr. Alton Buck, the Treasurer and a retired accountant from Fayetteville, North Carolina has served as the committee's treasurer. Mr. Buck maintained an accounting practice in Fayetteville which he later sold to a Mr. A.M. Edwards. Subsequent to the sale, Mr. Buck continued to serve as treasurer and the A.M. Edwards firm provided accounting services, on a professional basis, to the committee. As I have indicated to you, Mr. Buck no longer resides in Fayetteville but I have spoken with Mr. Edwards regarding the records maintained by his office and enclosed herewith please find his affidavit describing the records maintained in his office.

As I have previously indicated, neither Mr. Buck nor Mr. Edwards were involved in the campaign itself, but were

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of assistance to the campaign in the receipt and depositing of contributions and the reporting of contributions and expenditure. There was no involvement by Mr. Edwards nor Mr. Buck in the fund raising activities of the committee.

Please advise me if I can be of any further assistance.

Sincerely,

WALLACE, CREECH, SARDA  
& ZAYTOUN, L.L.P.

  
John R. Wallace

JRW:smr  
Enclosure  
cc: The Honorable Terry Sanford  
LSJW9219.002

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of: )  
The Sanford for Senate Committee ) MUR 3620  
and Alton G. Buck, as treasurer )

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
FEB 20 11 53 AM '95

**SUPPLEMENTAL RESPONSE TO INTERROGATORIES  
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. Please describe in full and complete detail when and how the DSCC informed the Sanford campaign of the DSCC's tally sheet program.

**RESPONSE:**

The Respondents acknowledge being advised of the DSCC fund raising effort. Upon information and belief, the Sanford committee was aware of the DSCC fund raising effort prior to July 24, 1992. The Respondents are without knowledge or information with respect to the matters addressed in Interrogatory 1.

2. Please describe when and how the DSCC recruited or encouraged the Sanford campaign to participate in the tally sheet program (e.g., telephone calls, written solicitations, etc.)

**RESPONSE:**

The Respondents acknowledge being advised of the DSCC fund raising effort. Upon information and belief, the Sanford committee was aware of the DSCC fund raising effort prior to July 24, 1992. The Respondents are without knowledge or information with respect to the matters addressed in Interrogatory 2.

3. Please state whether the DSCC offered, explicitly or impliedly, any incentive for participating in the tally sheet program to the Sanford campaign.

**RESPONSE:**

Representatives of the Respondents have no knowledge or information with respect to any incentive offered by

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the DSCC, explicit or implied, for participating in the tally sheet program. The Respondents are without further knowledge or information with respect to the matters addressed in Interrogatory 3.

4. If the answer to interrogatory number 3 is in the affirmative:

Please describe in full and complete detail each such incentive;

a. Please identify each and every person to whom the incentive(s) was offered or communicated;

b. Please describe how and when the DSCC communicated the incentive(s) to each of the persons identified in response to interrogatory number 4(b).

**RESPONSE:**

Not Applicable.

5. With regard to the solicitation entitled "Terry Sanford's Campaign for U.S. Senate" attached as Exhibit 5 to the complaint in MUR 3620 (the "Solicitation"), please provide the following information:

a. Please identify all persons who were involved and/or who had responsibility, including supervisory responsibility, for writing, producing and/or distributing the solicitation and please specify each person's role.

b. Please state the total number of solicitations mailed or otherwise distributed; what was the source of the distribution list?

c. Of those solicited, how many persons had given the maximum limit to the Sanford campaign?

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d. Please describe in full and complete detail how the Sanford campaign determined to whom the solicitation would be mailed or otherwise distributed. Was a person's status as a "maxed out" contributor to the Sanford campaign a factor in being included on the distribution list?

e. Please state whether the Sanford campaign produced and distributed more than one version of the solicitation. If so, identify and produce a copy of each.

f. Identify and produce a copy of all documents that accompanied the solicitation.

g. Please state the total number of tallied contributions made in response to the solicitation, the amount of each such tallied contribution and the identity of each contributor who made a tallied contribution in response to the solicitation.

h. Please state the total number of non-tallied contributions made in response to the solicitation, the amount of each such non-tallied contribution and the identity of each contributor who made a non-tallied contribution in response to the solicitation.

**RESPONSE:**

Upon information and belief, Erica Payne had responsibility for fund raising activities including communications with DSCC. She is without knowledge or information with respect to the number of solicitations mailed or distributed, the prior contribution of the solicited persons to the Sanford committee or the process for selecting persons to be solicited. She believes that no more than one version of the solicitation existed. She is without further knowledge or information with respect to the matters addressed in Interrogatory 5.

6. (Omitted)

**RESPONSE:**

Not Applicable.

7. Did the DSCC draft, prepare, supply or otherwise participate in the production of any solicitation issued by the Sanford campaign that referred to the tally program?

**RESPONSE:**

The Respondents are without knowledge or information with respect to the matters addressed in Interrogatory 7.

8. If the answer to interrogatory number 7 is in the affirmative:

a. Please identify and produce a copy of each such solicitation and/or draft solicitation provided by the DSCC;

b. For each such solicitation, identify each and every person who was involved in drafting or preparing the solicitation and describe the nature of each person's involvement.

**RESPONSE:**

The Respondents are without knowledge or information with respect to the matters addressed in Interrogatory 8.

9. Please state whether the Sanford campaign sent different solicitations to contributors who had contributed the statutory maximum to the Sanford campaign and to contributors who had not. If so, please describe in full and complete detail how or in what ways they differed.

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**RESPONSE:**

The Respondents are informed and believe that a single solicitation was sent to all contributors.

10. If the answer to interrogatory number 9 is in the affirmative, please identify and produce a copy of each solicitation sent to those contributors who had contributed the statutory maximum to the Sanford campaign.

**RESPONSE:**

Not Applicable.

11. Please state the date and amount of contributions made to the DSCC that were tallied for the Sanford campaign.

**RESPONSE:**

The Respondents are without knowledge or information with respect to the matters addressed in Interrogatory 11.

12. Please describe, in full and complete detail, how the Sanford committee recorded, memorialized, or otherwise kept records of the amount of contributions made to the DSCC that were tallied for the Sanford campaign, and please provide a copy of any documents on which such records were kept.

**RESPONSE:**

The Respondents are without knowledge or information with respect to the recording or memorialization of any such records.

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13. Please describe, in full and complete detail, how the DSCC advised the Sanford campaign of the amount of contributions to the DSCC that were tallied for the Sanford campaign.

**RESPONSE:**

The Respondents assume that the records as to which description is sought in Interrogatory 12 relate to the "tally sheet" activities addressed in the Complaint and the Respondents are without knowledge or information with regard to such matters.

14. Please describe, in full and complete detail, what the Sanford campaign communicated to the potential contributors about the DSCC's "tally sheet program" or the option of "tallying" a contribution to the DSCC for the Sanford campaign, and the method(s) by which that information was communicated.

**RESPONSE:**

Upon information and belief the information provided to potential contributors is as set out in the exhibits to the Complaint. The Respondents are further without knowledge or information with respect to the matters addressed in Interrogatory 14.

15. Please state whether you contend that tallied contributions are not earmarked contributions, as defined and regulated by 2 U.S.C. § 441a(a)(8) and the governing regulations. If you so contend:

a. Please state and describe in full and complete detail each and every fact which supports this contention.

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b. Please identify and produce each and every document which you contend supports this contention.

**RESPONSE:**

a. The Respondents herein incorporate their response set out in the letter of counsel of November 18, 1992 a copy of which is attached.

b. The Respondents refer the Commission to the exhibits attached to the complaints served upon the Sanford for Senate Committee.

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. Please provide a copy of each and every version of every solicitation, mailing or other document that the Sanford campaign sent to potential contributors in connection with the 1992 general election campaign which refers to the tally program or which discusses or describes the option of tallying a contribution for the Sanford campaign's tally account.

**RESPONSE:**

The Respondents do not physically possess, nor do they have knowledge of the location of the documents sought in Request 1. Please see the Affidavit of A.M. Edwards.

2. Please provide a copy of each and every version of every memorandum, letter or other document that the DSCC sent to the Sanford campaign explaining and/or concerning the tally sheet program.

**RESPONSE:**

Please see exhibits 3 and 5 to the Complaint. The Respondents do not physically possess, nor do they have knowledge of the location of the documents sought in Request 2. Please also see the Affidavit of A.M. Edwards.

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3. Please provide a copy of all documents pertaining to the tally sheet program, including, but not limited to:

- a. any and all agreements between the DSCC and the Sanford campaign;
- b. correspondence between the DSCC and the Sanford campaign;
- c. documents from the DSCC advising the Sanford campaign of the amount of contributions to the DSCC tallied for the Sanford campaign;
- d. telephone memoranda and/or other written memoranda pertaining to the tally program or its implementation;
- e. letters or sample letters soliciting tallied contributions;
- f. other documents or sample documents soliciting tallied contributions;
- g. telephone scripts for calls to contributors; and
- h. thank-you letters or sample thank-you letters sent to contributors.

**RESPONSE:**

The Respondents do not physically possess, nor do they have knowledge of the location of the documents sought in Request 3. Please also see the Affidavit of A.M. Edwards.

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4. Please provide a copy of each and every document the DSCC sent to the Sanford campaign relating to the amount of coordinated party expenditures the DSCC had spent or had determined to spend on behalf of the Sanford campaign.

**RESPONSE:**

The Respondents do not physically possess, nor do they have knowledge of the location of the documents sought in Request 4. Please see the Affidavits of A.M. Edwards.


5. Please provide a copy of all documents prepared by the Sanford campaign relating to or discussing the amount of coordinated party expenditures to be sent by the DSCC on behalf of the Sanford campaign.

**RESPONSE:**

The Respondents do not physically possess, nor do they have knowledge of the location of the documents sought in Request 5. Please see the Affidavits of A.M. Edwards.

This the 27<sup>th</sup> day of February, 1995.

WALLACE, CREECH, SARDA  
& ZAYTOUN, L.L.P.

  
John R. Wallace  
Attorneys for Respondents  
Post Office Box 12065  
Raleigh, North Carolina 27605  
Telephone: (919) 782-9322

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **SUPPLEMENTAL RESPONSE TO INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS** was served upon the opposing party by depositing a copy of same in the United States Mail, postage prepaid to:

Mary Ann Bumgarner, Esq.  
Office of General Counsel  
Federal Election Commission  
Washington, D.C. 20463

This the 27<sup>th</sup> day of February, 1995.

WALLACE, CREECH, SARDA  
& ZAYTOUN, L.L.P.

  
John R. Wallace

95043690521

DAVID R. KIRBY  
JOHN R. WALLACE \*  
PAUL R. CREECH  
PETER J. SARDA  
ROBERT E. ZAYTOUN \*  
RICHARD R. NORDAN  
RICHARD T. FOUNTAIN, III  
CHERYL M. SWART  
PATRICIA L. WILSON  
\*ALSO ADMITTED IN FLORIDA

KIRBY, WALLACE, CREECH,  
SARDA & ZAYTOUN  
ATTORNEYS AT LAW  
UCB PLAZA  
3805 GLENWOOD AVENUE, SUITE 380  
RALEIGH, NORTH CAROLINA 27612

MAILING:  
P.O. BOX 12065  
RALEIGH, N.C. 27605  
(919) 782-9322

November 18, 1992

FAX:  
(919) 782-8113

VIA FACSIMILE  
ORIGINAL VIA U.S. MAIL

Mary P. Mastrobattista, Esq.  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

RE: MUR 3620  
Response of Sanford for  
Senate Committee

Dear Ms. Mastrobattista:

By this letter, the Sanford for Senate Committee responds to the Complaint of the National Republican Senatorial Committee initiating MUR 3620 and alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

The Complaint alleges that the Sanford for Senate Committee (hereinafter the "Sanford Committee" or the "Committee"), the Democratic Senatorial Campaign Committee (hereinafter "DSCC") and others violated federal election laws prohibiting earmarking. Specifically, the Complaint alleges the acceptance of earmarked contributions by DSCC resulting in excessive contributions to certain Respondent Committees and by the failure of Respondents to comply with earmarking regulations of the Federal Election Commission (hereinafter "FEC" or the "Commission").

The Complaint attacks the tally sheet concept and treats a tallied contribution as the equivalent of an earmarked contribution. Such is not the case. As is herein set forth, and as is set forth in the Response of the DSCC, the evidence and arguments of which are incorporated herein by reference, the Complaint is without merit and should be dismissed without further action by the Commission.

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Mary P. Mastrobattista, Esq.  
November 18, 1992  
Page Two

As provided by the Commission, an earmarked contribution is one which is made with:

[A] designation, instruction or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of a clearly identified candidate or a candidate's authorized committee.

11 C.F.R. § 110.6(b)(1).

The Complaint is inaccurate in its allegations of fact and in its application of law. No prohibited earmarking arises from the conduct of the Respondents, because DSCC does not permit contributors to condition their contribution on the DSCC contributing in turn to an identified Senate candidate. Further, the DSCC tally does not result in funds being spent in behalf of a candidate identified for tally by a DSCC contributor.

Consistent with the response of the Democratic Senatorial Campaign Committee, the Respondent Sanford Committee understands the tally sheet to be a component of the DSCC's efforts to track fund raising by the DSCC's constituents, elected Democratic Senators and Democratic nominees for election to the Senate. The Respondent Sanford Committee recognizes that the DSCC is dependent upon the efforts of its constituents for fund raising efforts in behalf of the DSCC and might, appropriately, choose to monitor such efforts. However, the Sanford Committee also recognizes that DSCC will not accept earmarked contributions and has never expected that funds raised by the Sanford Committee for the benefit of DSCC would pass through the DSCC back to the Sanford Committee.

It is in fact understood that funds raised for the DSCC are to be expended by the DSCC in the DSCC's discretion, whether for DSCC expenses or as § 441a(d) coordinated expenditures. The DSCC has always

95043690523

Mary P. Mastrobattista, Esq.  
November 18, 1992  
Page Three

asserted its decision making authority with respect to funds in its treasury, and candidate committees have never been led to believe that they could control DSCC allocations of § 441a(d) money by their fund raising efforts in behalf of the DSCC. Indeed, Democratic Senate candidates recognize that the prospects for success in races around the country should be determinative of DSCC decisions to expend DSCC funds.

The Complaint alleges, by the document attached thereto as Exhibit "5," that Senator Sanford "asked his contributors to evade Federal limits through the 'tally sheet.'" That allegation is patently false.

Exhibit "5" (attached hereto for reference) provides that "the DSCC may accept money above and beyond what a candidate raises." It further provides "if you have given your personal maximum to a candidate, you may still give additional monies to the DSCC." The solicitation further indicates that contributions "may be tallied."

Nowhere does the document ask contributors to "evade Federal limits" (as alleged by Complainant) nor does the document suggest that funds contributed to the DSCC will be passed through to the Sanford for Senate Committee. The document emphasizes primarily the benefits to DSCC contributors, including participation in various DSCC programs and events including retreats, dinners, receptions and round table discussions. The emphasis of the Sanford solicitation in behalf of the DSCC is that the DSCC "works to elect Democratic Senators across the country."

By letter dated November 4, 1992, the Commission, through counsel, has provided this Respondent with additional materials provided to the Commission by the Complainant. Those materials relate to the New York Senate contest. Contrary to Complainant's assertions, it is not reasonable to assume that the purported state of mind of certain New York contributors has anything to do with North Carolina contributors.

95043690524

Mary P. Mastrobattista, Esq.  
November 18, 1992  
Page Four

CONCLUSION

Neither the Sanford Committee nor DSCC contributors, contributing at the encouragement of the Sanford Committee, had any discretion or control over the expenditure by DSCC of its funds. No representation to any prospective contributor suggests as much, and in fact DSCC correspondence and practice indicate to the contrary. Therefore, for the reasons set forth herein, and as set out in the Response of the Democratic Senatorial Campaign Committee, the arguments of which are incorporated herein by reference, this matter should be dismissed without further action.

Based upon the foregoing, the Respondent Sanford Committee requests that this matter be dismissed with no further action by the Commission. The timing of the Complaint suggests a partisan motivation, and the factual allegations do not amount to a violation of the Federal Election Campaign Act or the Commission's regulations.

Sincerely,

KIRBY, WALLACE, CREECH,  
SARDA & SAYTOUN

  
John R. Wallace

JRW/pgj  
Enclosure

cc: Mr. Alton G. Buck, Treasurer

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Exhibit 5

**TERRY SANFORD'S CAMPAIGN FOR U.S. SENATE**  
and the  
**Democratic Senatorial Campaign Committee**

The Democratic Senatorial Campaign Committee (DSCC) works to elect Democratic Senators across the country. One of their tools is financial. The DSCC may accept money above and beyond what a candidate raises. If you have given your personal maximum to a candidate, you may still give additional monies to the DSCC. Individuals may give a total of \$20,000 to the DSCC; Political Action Committees may give up to \$15,000. If specified, such contributions may be "tallied" to Terry Sanford's DSCC tally sheet.

The DSCC will help the Sanford campaign according to need, winability, and our tally sheet total. Terry Sanford's race will be close: the tally sheet will be of vital importance.

In addition to helping Terry Sanford, DSCC contributions offer further benefits, according to the level of contribution:

**The Majority Trust - \$20,000**

*The Majority Trust reflects the highest level of support for the DSCC. Benefits include participation in all DSCC donor program events sponsored by the Leadership Circle and the Business Roundtable, as well as events planned exclusively for Majority Trust members. Past programs have included retreats in Aspen, Newport, Rhode Island, and Florida. The retreats feature guests including Majority Leader George Mitchell, Chairman Chuck Robb, Senator Lloyd Bentsen and others.*

**The Leadership Circle - \$15,000**

*The Leadership Circle provides an opportunity for major contributors and Democratic Senators and candidates to exchange resources and ideas. Leadership Circle benefits include special weekends centered around the Superbowl and the Kentucky Derby, as well as a table at the Annual Congressional Dinner and a variety of regional events. Some of the past Leadership Circle events include: a dinner at the home of Senator and Mrs. John D. Rockefeller IV, a reception at the home of Mrs. Pamela Harriman, a cocktail reception on Capitol Hill for Majority Leader George Mitchell, and a spring dinner/dance at the Ritz-Carlton.*

**The Business Roundtable-\$5,000**

*The Business Roundtable brings Senators together with business leaders interested in politics and public policy. The Business Roundtable hosts six meetings a year in Washington and several regional meetings. It includes a complimentary invitation to the annual Fall Dinner. Participants have included Majority Leader George Mitchell, Senator Sam Nunn, and Senator Lloyd Bentsen.*

Electing a Democratic majority in the Senate is vital business: Terry Sanford needs to be in that majority. To help him, and to help the DSCC, please make your check to DSCC, and note on it "Sanford Tally Sheet". Then mail your check to Sanford for Senate, P.O. Box 30787, Raleigh, N.C. 27622-0787, or to the DSCC office in Washington.

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MAR 7 9 22 AM '95

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the matter of: )  
The Sanford for Senate Committee ) MUR 3620  
and Alton G. Buck, as treasurer )

**AFFIDAVIT OF ALBERT M. EDWARDS, JR.**

I, Albert M. Edwards, Jr., being duly sworn, depose and say:

1. That I am over the age of eighteen and under no disability.

2. In 1987, I managed the Fayetteville office of the firm Pittard Perry & Crone which acquired the accounting practice of Alton G. Buck, Treasurer of the Sanford for Senate Committee. I ultimately acquired the office in 1991.

3. At the time of the acquisition of Mr. Buck's accounting practice, Mr. Buck had as a client the Sanford for Senate Committee.

4. After the acquisition of Mr. Buck's practice, I continued to provide professional services to the Sanford for Senate Committee as Albert M. Edwards, Jr., C.P.A. Mr. Buck served and continues to serve as Treasurer of the Committee.

5. Our services to the Sanford Committee included the receipt, deposit and reporting of contributions, the issuance of checks, the reporting of disbursements and the maintenance of invoices in connection with such disbursements.

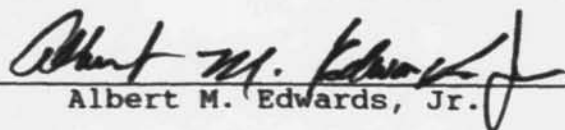
6. At no time did the Pittard Perry and Crone firm, the

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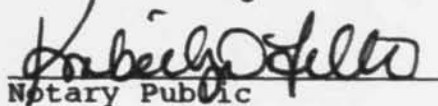
Albert M. Edwards, Jr. firm, nor to my knowledge Alton G. Buck, have involvement in the day to day activities of the campaign and at no time did we have an active role in the fund raising activities of the campaign.

7. The books and records that I maintained from the 1986 and 1992 election cycles includes records of contributors and contributions, invoices, cancelled checks, and records of disbursements and related matters. Our records do not include the material solicited by the Requests for Production of Documents served upon the Committee.

8. Further, the affiant sayeth not

  
Albert M. Edwards, Jr.

SWORN TO AND SUBSCRIBED  
before me this 27 day  
of February, 1995.

  
Notary Public

My Commission Expires: 4-1-97

95043690529

# National Republican Senatorial Committee

SENATOR PHIL GRAMM  
CHAIRMAN

WILLIAM D. HARRIS  
EXECUTIVE DIRECTOR

July 18, 1994

MUR 4010

JUL 18 4 14 PM '94

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Sirs and Madams:

This letter constitutes a formal complaint filed pursuant to 2 U.S.C. § 437g(a) of the Federal Election Campaign Act (the "Act") by the National Republican Senatorial Committee ("NRSC"). For the reasons set forth below, the FEC should investigate apparent violations of the Act by California candidate Dianne Feinstein, the Feinstein for Senate '94 Committee, The Kamber Group, Incorporated, and the Democratic Senatorial Campaign Committee ("DSCC").

## FACTS

On July 18, 1994, candidate Feinstein is conducting a \$1,500 per person fundraising dinner at the residence of lobbyist Lynn Cutler. Enclosed as Exhibit 1 is an invitation letter dated June 27, 1994, on the stationery of The Kamber Group, a corporation, signed Ms. Cutler. The letter specifically requests \$1,500 to join the DSCC. The letter further encourages donors to "tally" their donation "to Senator Feinstein's campaign." Ms. Cutler further states: "this means that those dollars will go to her [Feinstein's] effort."

## THE LAW

Section 441a of the Act limits an individual's contribution to a candidate to \$1,000 per election. Subsection (a)(8) states:

For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate.

RONALD REAGAN REPUBLICAN CENTER  
425 SECOND STREET NE • WASHINGTON DC 20002 • (202) 675-6000

PAID FOR AND AUTHORIZED BY THE NATIONAL REPUBLICAN SENATORIAL COMMITTEE

This ban on "earmarking" is repeated in FEC regulations, 11 C.F.R. § 110.6(a).

Section 441b prohibits any corporation from making a "contribution or expenditure" in connection with the election campaign of any federal candidate, including a candidate for U.S. Senator.

Section 441d of the Act requires that all solicitations sent to the public contain a notice of who paid for the solicitation and whether it was authorized by the candidate.

#### VIOLATIONS

##### Count I

Respondents Feinstein, Feinstein for Senate '94, and DSCC, have violated or are about to violate the \$1,000 contribution limit of Section 441a of the Act, by accepting \$1,500 "earmarked" contributions from individuals laundered through DSCC which contributions DSCC will "tally" and spend on behalf of the Feinstein campaign. These contributions are in excess of any other donations by the same donors to Feinstein for Senate '94.

##### Count II

Respondents Feinstein, Feinstein for Senate '94 and The Kamber Group, Incorporated, violated Section 441b by using corporate resources, including but not necessarily limited to corporate stationery, in connection with written solicitations for illegal contributions to the Feinstein campaign.

##### Count III

Respondents Feinstein, Feinstein for Senate '94, DSCC and The Kamber Group, Incorporated, violated Section 441d of the Act by failing to place the required notice which informs the public who paid for the fundraising letter contained in Exhibit 1 and the fact that they were authorized by candidate Feinstein.

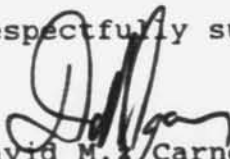


RELIEF

NRSC requests the FEC to conduct a prompt and expeditious investigation and seek civil penalties of \$5,000 or 100% of the amount of unlawful contributions raised or expenditures made, whichever is greater, as provided by Section 437g(5)(A) of the Act. NRSC further requests that all unlawful contributions be refunded immediately.

The above is true and correct to the best of my knowledge, information or belief.

Respectfully submitted,

  
David M. Carney on behalf of  
the National Republican  
Senatorial Committee

Subscribed and sworn to before me  
this 18th day of July, 1994

  
Notary Public

My commission expires: 1-31-98

95043690532



**THE  
KAMBER  
GROUP**

June 27, 1994

Corporate  
Headquarters  
1820 I. Street, NW  
Suite 700  
Washington, DC  
20036  
(202) 223-8700  
FAX (202) 684-8549

90 East 20th Street  
Suite 200  
New York, NY  
10016  
(212) 679-4840  
FAX (212) 684-0074

We have rescheduled the dinner in my home for Senator Dianne Feinstein of California. On Monday, July 18th, we will gather a small group of women to have dinner with the Senator.

In the last few weeks, the situation in California has become very scary. The Republican nominee, Michael Huffington, has millions of dollars of his own money that he is spending on the campaign to unseat Sen. Feinstein. During the primary, he used his ads to attack her instead of his opponents, and it took a toll on her standing in the polls.

Huffington is a radical right candidate. He is adamantly opposed to a woman's right to choose. He represents everything that is antithetical to us as women and as Jews. It would be terrible to have him defeat one of the most intelligent, effective, female United States Senators.

I am asking that you join the Women's Council of the Democratic Senate Campaign Committee as the price of dinner. You can "tally" your membership to Senator Feinstein's campaign. This means that those dollars will go to her effort.

You then also have membership in the Council, which has regular interesting briefings by women in the Administration, the White House, and the Congress. These are usually chaired by Sen. Barbara Boxer and Sen. Barbara Mikulski, who co-chaired the DSCC Women's Council.

The membership fee in the Women's Council is \$1500. I know that if you are not accustomed to political contributing, that it seems like a great deal of money. It is a great deal of money. But when you consider that Dianne must raise at least \$15 million dollars in order to be competitive with Huffington, this becomes an important investment.

If Dianne Feinstein were to lose her Senate seat this year, we easily could lose Democratic control of the Senate. This is not an idle statement. Just think of Jesse Helms as Chairman of the Foreign Relations Committee!

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However, I believe that we have a special obligation as Jewish women to help Dianne that transcend partisan politics. She has become an important role model for our women all over the country. When she stood on the floor of the Senate and led the fight against assault weapons, all of us stood taller. It is these things that make it incumbent upon us to perhaps create some different priorities for our spending this year.

I hope that you will join Senator Feinstein and myself at my home, 4335 37th St., N.W. in Washington at 7:30 p.m. on Monday, July 18th. I will call you next week to talk with you about this, and am grateful for your time.

Sincerely,

*Lynda*  
Lynda Cutler

cc: Senator Dianne Feinstein  
Senator Barbara Boxer, Co-Chair of the DSCC Women's Council

*Hope you'll join us!*



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

JULY 21, 1994

David M. Carney, Deputy Executive Director  
National Republican Senatorial Committee  
425 Second Street, N.E.  
Washington, D.C. 20002

RE: MUR 4010

Dear Mr. Carney:

This letter acknowledges receipt on July 18, 1994, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). The respondent(s) 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 4010. Please refer to this number in all future communications. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

*Mary L. Taksar*

Mary L. Taksar, Attorney  
Central Enforcement Docket

Enclosure  
Procedures

95043690535



FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

JULY 21, 1994

Michael J. Barrett, Treasurer  
Feinstein For Senate '94  
909 Montgomery Street, Suite 102  
San Francisco, CA 94133

RE: MUR 4010

Dear Mr. Barrett:

The Federal Election Commission received a complaint which indicates that Feinstein For Senate '94 ("Committee") 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 4010. 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 the Committee and you, as treasurer, 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.

95043690556

Michael J. Barrett, Treasurer  
Feinstein For Senate '94  
Page 2

If you have any questions, please contact Alva Smith at  
(202) 219-3400. For your information, we have enclosed a brief  
description of the Commission's procedures for handling  
complaints.

Sincerely,

*Mary L. Taksar*

Mary L. Taksar, Attorney  
Central Enforcement Docket

Enclosures

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

95043690537





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JULY 21, 1994

The Honorable Dianne Feinstein  
909 Montgomery Street, Suite 400  
San Francisco, CA 94133

RE: MUR 4010

Dear Senator Feinstein:

The Federal Election Commission received a complaint which indicates 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 4010. 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.

95043690538

The Honorable Dianne Feinstein  
Page 2

If you have any questions, please contact Alva Smith at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

*Mary L. Taksar*

Mary L. Taksar, Attorney  
Central Enforcement Docket

**Enclosures**

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

95043690539



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

JULY 21, 1994

The Honorable Dianne Feinstein  
331 Hart Senate Office Building  
Washington, D.C. 20510-0504

RE: MUR 4010

Dear Senator Feinstein:

The Federal Election Commission received a complaint which indicates 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 4010. 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.

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95043690540

The Honorable Dianne Feinstein  
Page 2

If you have any questions, please contact Alva Smith at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

*Mary L. Taksar*

Mary L. Taksar, Attorney  
Central Enforcement Docket

**Enclosures**

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

9 5 0 4 3 6 9 0 5 4 1



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JULY 21, 1994

Donald J. Foley, Treasurer  
Democratic Senatorial Campaign Committee  
430 South Capitol Street, S.E.  
Washington, D.C. 20003

RE: MUR 4010

Dear Mr. Foley:

The Federal Election Commission received a complaint which indicates that the Democratic Senatorial Campaign Committee ("DSCC") 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 4010. 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 the DSCC and you, as treasurer, 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.

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95043690542

Donald J. Foley, Treasurer  
Democratic Senatorial Campaign Committee  
Page 2

If you have any questions, please contact Alva Smith at  
(202) 219-3400. For your information, we have enclosed a brief  
description of the Commission's procedures for handling  
complaints.

Sincerely,

*Mary L. Taksar*

Mary L. Taksar, Attorney  
Central Enforcement Docket

Enclosures

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

9 5 0 4 3 6 9 0 5 4 3





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

JULY 21, 1994

Lynn Cutler, Sr. Vice President  
The Kamber Group, Incorporated  
1920 L Street N.W., Suite 700  
Washington, D.C. 20036

RE: MUR 4010

Dear Ms. Cutler:

The Federal Election Commission received a complaint which indicates 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 4010. 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.

95043690544

Lynn Cutler, Sr. Vice President  
The Kamber Group, Incorporated  
Page 2

If you have any questions, please contact Alva Smith at  
(202) 219-3400. For your information, we have enclosed a  
brief description of the Commission's procedures for handling  
complaints.

Sincerely,

*Mary L. Taksar*

Mary L. Taksar, Attorney  
Central Enforcement Docket

Enclosures

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

95043690545



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JULY 21, 1994

Victor Kamber, Registered Agent  
The Kamber Group, Incorporated  
1920 L Street N.W., Suite 700  
Washington, D.C. 20036

RE: MUR 4010

Dear Mr. Kamber:

The Federal Election Commission received a complaint which indicates that The Kamber Group 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 4010. 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 The Kamper Group 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.

95043690546

Lynn Cutler, Sr. Vice President  
The Kamber Group, Incorporated  
Page 2

If you have any questions, please contact Alva Smith at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

*Mary L. Taksar*

Mary L. Taksar, Attorney  
Central Enforcement Docket

Enclosures

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

95043690547



# Democratic Senatorial Campaign Committee

430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447

August 11, 1994

**Chairman**

Bob Graham, FL

**In-Office**

George Mitchell, ME

**Program Chair**

John D. Rockefeller IV, WV  
Richard Shelby, AL  
Majority Trust

**Chris Dodd, CT**

Max Baucus, MT  
Leadership Circle

**David Pryor, AR**

Patty Murray, WA  
Business Roundtable

**Tom Harkin, IA**

Sen. Nightingale Campbell, CO  
Labor Council

**Barbara Mikulski, MD**

Barbara Boxer, CA  
Women's Council

**Paul Clark**

Charles E. Robb, VA  
John Brown, LA  
John Kerry, MA

Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

VIA Fax: 219-3923

Re: Designation of Counsel for the Democratic Senatorial  
Campaign Committee (DSCC)

Please be advised that the undersigned counsel is authorized to act on behalf of DSCC, including receiving any communications from the Federal Election Commission, in connection with pending and future matters requiring notification and/or a response from the DSCC.

Counsels are:

Robert Bauer  
Judith Corley  
B. Holly Schadler

Perkins Coie  
607 14th Street, N.W.  
Washington, DC 20005

Respectfully,

Donald J. Foley

# PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011  
(202) 628-6600 • FACSIMILE (202) 434-1690

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COMMISSION  
ADMINISTRATIVE DIVISION

AUG 16 1 07 PM '94

August 9, 1994

Ms. Alva Smith  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

Re: MUR 4010

Dear Ms. Smith:

I called you yesterday, and expect that we will speak still today, about the reasons for this letter requesting an extension in the time for response to the "reason to believe" notification in this matter.

The Complaint was forwarded by the Commission to the Democratic Senatorial Campaign Committee offices on Capitol Hill and received by the Committee on July 25. The Committee, in turn, forwarded a copy by mail to this office for response. The complaint appeared yesterday, August 8, 1994.

Under these circumstances, we would appreciate some additional time to respond. We will not, however, request a full 20 days calculated from the date the complaint was received by the Committee on July 25, 1994. We instead propose an extension until August 17, 1994, less than two weeks from today, and we note that if granted the extension would permit the reply to be filed on August 17, 1994, the date that the DSCC will reply to another complaint of the NRSC raising in part similar issues.

[04005-0001/LETTER.01]

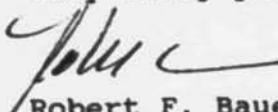
95043690549



August 9, 1994  
Page 2

We would much appreciate your consideration in the matter.

Very truly yours,



Robert F. Bauer  
General Counsel to  
Democratic Senatorial  
Campaign Committee

RFB:smb

95043690550



FEDERAL ELECTION COMMISSION  
WASHINGTON DC 20463

AUGUST 17, 1994

Robert F. Bauer, Esq.  
Perkins Coie  
607 14th Street, N.W.  
Washington, D.C. 20005-2011

RE: MUR 4010  
David J. Foley, Treasurer  
Democratic Senatorial Campaign  
Committee

Dear Mr. Bauer:

This is in response to your letter dated August 9, 1994, requesting an extension until August 17, 1994 to respond to the complaint filed in the above-noted 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 August 17, 1994.

If you have any questions, please contact Alva E. Smith at (202) 219-3400.

Sincerely,

*Mary L. Taksar*

Mary L. Taksar, Attorney  
Central Enforcement Docket

95043690551

## OLDAKER, RYAN &amp; LEONARD

ATTORNEYS AT LAW

818 CONNECTICUT AVENUE, N.W.

SUITE 1100

WASHINGTON, D.C. 20006

(202) 728-1010

FACSIMILE (202) 728-4044

August 10, 1994

Ms. Alva Smith  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

MUR 4010  
The Honorable Dianne Feinstein  
Feinstein for Senate '94  
Michael J. Barrett, as treasurer

Dear Ms. Smith:

This is a request for an extension of time to respond to the complaint in the above-referenced matter, on behalf of the Honorable Dianne Feinstein, the Feinstein for Senate '94 committee and Michael J. Barrett, as treasurer.

Although the Feinstein Committee apparently received the Commission's notification on July 25, 1994, I did not receive a copy of the Commission's letter and the complaint until this morning because it had been misdirected. In addition, there was some confusion as to whether the matter was being handled by the DSCC or the Committee would file a separate response. Thus, the Committee was unaware that it needed to file a separate request for an extension. We apologize for this delay. In light of a number of upcoming deadlines in other matters and vacation plans, I am requesting an extension of twenty days from the original due date, August 9, making a response due on August 29, 1994.

We would appreciate your assistance in granting us this additional time to respond.

Sincerely,

*Lyn Utrecht*  
Lyn Utrecht

95043690552

06-10-94 01:03PM OLDAKER RYAN & LEONARD

P.23 P02

06-10-94 02:26PM OLDAKER RYAN & LEONARD

P.23 P11

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OFFICE OF GENERAL  
COUNSEL

**STATEMENT OF DESIGNATION OF COUNSEL**

**MUR 4010**

**NAME OF COUNSEL:** Lyn Utrecht

**ADDRESS:** Oldaker, Ryan & Leonard  
518 Connecticut Avenue, NW Suite 1100  
Washington, D.C. 20006

**TELEPHONE:** ( 202 ) 728-1010

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.

8/10/94  
Date

Michael J. Barrett  
Signature

**RESPONDENT'S NAME:** The Honorable Dianne Feinstein  
Feinstein for Senate '94  
Michael J. Barrett, as treasurer

**ADDRESS:** 909 Montgomery Street, Suite 102  
San Francisco, CA 94133

**TELEPHONE:** HOME (            )             
**BUSINESS:** ( 415 ) 433-1333



FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

August 12, 1994

Lyn Utrecht, Esq.  
Oldaker, Ryan & Leonard  
818 Connecticut Avenue, N.W. Suite 1100  
Washington, D.C. 20006

RE: MUR 4010  
The Honorable Dianne Feinstein  
Feinstein for Senate '94  
Michael J. Barrett, as treasurer

Dear Ms. Utrecht:

This is in response to your letter dated August 10, 1994, requesting an extension until August 29, 1994 to respond to the complaint filed in the above-noted 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 August 29, 1994.

If you have any questions, please contact Alva E. Smith at (202) 219-3400.

Sincerely,

*Mary L. Taksar*

Mary L. Taksar, Attorney  
Central Enforcement Docket

95043690554



**THE  
KAMBER  
GROUP**

Corporate  
Headquarters  
1920 L Street, NW  
Suite 700  
Washington, DC  
20036  
(202) 223-8700  
FAX (202) 679-5559

30 East 29th Street  
Suite 200  
New York, NY  
10016  
(212) 679-4540  
FAX (212) 684-0074

**BY CERTIFIED MAIL**

August 9, 1994

Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

**RE: MUR 4010**

Dear Sirs and Madams:

I am counsel to The Kamber Group Incorporated ("TKG") and Ms. Lynn Cutler in the above-captioned matter and am responding to a complaint filed by the National Republican Senatorial Committee against both of my clients. For the reasons stated below I respectfully request the Commission not to take any action against TKG and Ms. Cutler. (Please note that although you notified Ms. Cutler that she may have violated the Act, complainant seeks no action against her.)

The gist of complainant's allegations are that my client TKG violated Section 441(b) of the Federal Election Regulations by making an unlawful contribution (I assume they believe to the Democratic Senate Campaign Committee) and that the invitation sent by Ms. Cutler did not contain the appropriate disclosure notice.

The facts are straightforward and demonstrate that Ms. Cutler made an entirely inadvertent and innocent mistake in sending the invitation on corporate letterhead, and TKG and Ms. Cutler took immediate action to correct the mistake as soon as they learned of their error. At no time did they act deliberately to circumvent the regulations. Ms. Cutler mailed an invitation on TKG letterhead for a dinner at her home where Senator Feinstein was the guest of honor. The letter requested the recipient to "join the Women's Council of the Democratic Senate Campaign Committee as the price of the dinner." (A copy of the letter is attached to the complaint.) Ms. Cutler used the corporate stationery in error and did not intend to circumvent the FEC prohibitions. Cutler Decl., para. 2. Ms. Cutler did not consult with TKG management about use of the corporate letterhead for such purposes. Cutler Declaration, para. 2. Had she inquired she would have been informed that it was impermissible under law. Kamber Declaration, para 3.

TKG management and counsel learned of her action only after the instant complaint was filed. Kamber Decl., para. 3. Upon learning of the mistake, TKG billed Ms. Cutler for the cost of the letterhead and she promptly paid such to TKG. Kamber Decl., para 5. Ms. Cutler arranged for the dinner on her own time and the use of TKG facilities was de minimis. Cutler Decl., para 3. At no time did TKG

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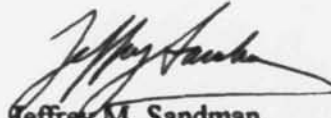
Federal Election Commission  
August 9, 1994  
Page Two

make a corporate contribution or expenditure in the connection with the election campaign of any federal candidate, including a candidate for U.S. Senator. Kamber Decl., para 4. Although TKG learned of the incident only after the fact, to the best of TKG's knowledge, the invitation was not authorized by the Feinstein campaign. Kamber Decl., para. 6.

Therefore respondents request that the facts warrant that no further action be taken against them by the Commission. Please do not hesitate to contact me if you need additional information to assist your inquiry.

Thank you for your attention.

Sincerely,



Jeffrey M. Sandman  
Senior Vice President and General Counsel

JMS:ljl

Attachments

cc: Victor Kamber  
Lynn Cutler

95043690556

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4010

NAME OF COUNSEL: Jeffrey M. Sandman, Esq.

ADDRESS: 1920 L Street, N.W.  
Suite 700  
Washington, D.C. 20036

TELEPHONE: ( 202 ) 223-8700

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.

August 4, 1994  
Date

  
Signature

RESPONDENT'S NAME: Lynn Cutler

ADDRESS: 1920 L Street, N.W.  
Suite 700  
Washington, D.C. 20036

TELEPHONE: HOME ( 202 ) 537-1672  
BUSINESS ( 202 ) 223-8700

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OFFICE OF GENERAL  
COUNSEL  
AUG 11 12 34 PM '94

95043690557

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4010

NAME OF COUNSEL: Jeffrey M. Sandman, Esq.

ADDRESS: 1920 L Street, N.W.  
Suite 700  
Washington, D.C. 20036

TELEPHONE: ( 202 ) 223-8700

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.

August 9 , 1994  
Date

Victor Kamber  
Signature

RESPONDENT'S NAME: The Kamber Group, Incorporated

ADDRESS: 1920 L Street, N.W.  
Suite 700  
Washington, D.C. 20036

TELEPHONE: HOME(        )  
BUSINESS( 202 ) 223-8700

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COUNSEL

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## DECLARATION OF LYNN G. CUTLER

Lynn G. Cutler submits this Declaration in support of the letter from Jeffrey M. Sandman, my counsel in this matter, to the Federal Election Commission responding to MUR 4010, and declares:

1. In late June 1994 I sent an invitation to a number of Democratic women inviting them to my home for a dinner on July 18, 1994 where Senator Dianne Feinstein was to be the guest of honor. In that letter I urged the recipients to join the Women's Council of the Democratic Senate Campaign Committee and told them they can "tally" their membership to Senator Feinstein's Campaign. In using the word "tally" I believed that there would be no confusion with "earmarking" and the regulations relating thereto.

2. At no time did I act knowingly or deliberately to circumvent the FEC regulations. I now realize I used The Kamber Group's ("TKG") corporate stationery incorrectly, but did not intend that this use should be construed as a corporate expenditure; I simply made a mistake. I did not consult with TKG management about use of the corporate letterhead for such purposes.

3. Upon learning of the mistake I made in sending the invitation on TKG letterhead, I notified TKG management, was billed for the cost of the mailing, and paid TKG in full for that amount. I arranged the dinner on my own time and the use of TKG facilities was de minimis.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 9<sup>th</sup> day of August 1994 at Washington, D.C.

  
Lynn G. Cutler

95043690559

## DECLARATION OF VICTOR KAMBER

Victor Kamber submits this Declaration in support of the letter from Jeffrey M. Sandman, General Counsel to The Kamber Group, to the Federal Election Commission responding to MUR 4010, and declares:

1. I am president and CEO of respondent The Kamber Group Incorporated ("TKG").
2. At no time did this corporation act deliberately to circumvent the regulations or spirit of the Federal Election Regulations or the Act.
3. Prior to July 19, 1994, when I saw a press release issued by complainant indicating that a complaint was being filed, neither I nor management of this company had knowledge of the invitation sent by Ms. Cutler, or the use of TKG stationery for the invitation. Ms. Cutler did not consult with me or the corporation's management or counsel about the use of corporate stationery for this purpose. Had she inquired she would have been informed that it was impermissible.
4. The Kamber Group has never made a corporate contribution or expenditure in connection with the election of any candidate for federal office, nor does it condone any attempts to do so. I shall reiterate this policy to our staff.
5. As soon as management learned of the mistake made by Ms. Cutler TKG billed her for use of the stationery. Ms. Cutler has since reimbursed TKG.
6. To the best of my knowledge the invitation was not authorized by The Feinstein for Senate Campaign.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 9th day of August, 1994 at Washington, D.C.

  
\_\_\_\_\_  
Victor Kamber

95043690560

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A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011  
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August 17, 1994

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COUNSEL  
AUG 18 12 27 PM '94

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

Re: MUR 4010

Dear Mr. Noble:

The Democratic Senatorial Campaign Committee ("DSCC") seeks by this letter immediate dismissal of the complaint filed by the National Republican Senatorial Committee ("NRSC") on July 18, 1994. That complaint alleges in "Count II" that DSCC in collaboration of Respondents, Dianne Feinstein and her principal campaign committee, The Feinstein for Senate, have violated or "are about to violate" the Act by engaging in prohibited "earmarking."

The NRSC in this case and in others still pending has rehearsed these same allegations before. That Committee typically identifies some representation in fundraising materials, then mischaracterizes those representations or their legal significance; and when is all done, fashions out of these misrepresentations a supposed "earmarking" case. But the NRSC, having missed the mark before in these matters, misses it yet again on this occasion.

## TALLY PROGRAM

DSCC has stated before in responding to MURs 3617, 3620, 3653 and 3658 and repeats here the essential background about the tally program not mentioned by NRSC.

\* NRSC also alleges that a letter prepared by a DSCC supporter hosting an event in her home omitted the "disclaimer" required under 2 U.S.C. § 441d. That section applies, however, to "general public political advertising," whereas the letter in question was a personal invitation to "a small group of women" to attend an in-home fundraising event.

[04005-0048/DA942290.030]



Lawrence Noble, Esq.  
August 17, 1994  
Page 2

The Tally Sheet is an informal accounting process established by the DSCC to keep track of the amount of money raised for the Committee's use by a particular candidate. The program is simply and exclusively an information gathering procedure. Each contribution raised for the DSCC by a candidate is "tallied" or credited to that candidate's "tally sheet." The total amount of money raised by a particular candidate for the Committee is then taken into consideration as one of several factors used by the DSCC when it decides on funding decisions under the spending authority provided at 2 U.S.C. § 441a(d).

DSCC has an express policy of not accepting earmarked contributions. When a contribution is received by the DSCC with a designation by a contributor which would appear to constitute earmarking, a letter is sent to clarify the contributor's intent. Sample copies of this letter have been provided to the Commission in connection with its response to MURs 3617, 3620, 3653 and 3658. As the letter shows, the DSCC offers the opportunity of a refund to each contributor who did not intend to "tally" to a particular candidate.

All tallied contributions (and all other contributions) are placed into the general DSCC bank accounts and used entirely at the DSCC's discretion. The funds tallied to a particular candidate are not "passed through" the DSCC to the candidate who helped raise the funds. Nor are the funds spent on a dollar-for-dollar exchange for the amounts raised by a candidate. When funds are deposited in the DSCC's account, they are used for the Committee's most pressing expenses first. This may be, for example, administrative expenses of the DSCC, or Section 441a(d) spending on behalf of another candidate. There are examples of a candidate who raised large amounts of money for the DSCC (such as the case of a barely challenged incumbent), but received little or no Section 441a(d) funding in return. Similarly, there are candidates who have raised little or no money for the Committee, but received full funding under the relevant contribution and expenditure limitations available to the DSCC.

The DSCC has never raised sufficient funds to "max out" under the coordinated party spending limits to each of its party's Senate nominees in any election cycle. Because of this, the Committee has had to ensure that the monies the party did have available were used to the maximum effect. To this end, in determining which candidates will receive funding

under Section 441a(d) and to what extent, the DSCC looks to a variety of factors:

- Whether the race is winnable;
- Whether the candidate has a serious challenger;
- Whether the candidate has been successful in his or her own campaign's fundraising;
- Whether the candidate has assisted the DSCC in its fundraising efforts;
- Whether the DSCC has more pressing expenditures that must be made.

These criteria have been provided and emphasized repeatedly, orally and in writing, to DSCC contributors and Democratic candidates. The significance of the tally, in short, is its role as an incentive to its candidates to support its fundraising efforts. The Committee operates under the direction of Democratic United States Senators and candidates for the benefit of all Democratic Senate candidates, both incumbent and challenger. As the Committee has no independent funding source, it must draw on their efforts to raise the monies required to perform its functions.

An earmarked contribution is one which is made with:

a designation, instruction or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of a clearly identified candidate or a candidate's authorized committee.

11 C.F.R. § 110.6(b)(2) (emphasis added). None of the contributions received by the DSCC and tallied to a particular candidate can be considered earmarked, since such tallied contributions do not result in the funds being spent on behalf of a particular candidate designated by the contributor, nor are contributors allowed to so condition these contributions.

**REPRESENTATIONS IN NRSC COMPLAINT**

NRSC constructs its tally case out of a letter proposed by Ms. Lynn Cutler who by that letter was inviting potential contributors to an event in her home for the Women's Council of the DSCC. The Women's Council is a project of DSCC, dedicated to the support of women seeking election to the U.S. Senate as Democrats. In her letter, Ms. Cutler encouraged recipients of the letter to contribute to DSCC's Women Council and "tally" their contributions to Ms. Feinstein. NRSC cites, particular, Ms. Cutler's statement that contributions tallied in this way "will go to [Senator Feinstein's] effort."

Ms. Cutler has acknowledged that her representations were not authorized by the DSCC. Also, she is not a donor. At most NRSC might be expressing "concern" that the wording of this letter would encourage donors to believe that a "tally" was an "earmarking" instruction or to "earmark" their contributions.

There is no evidence that such is the case. Any inaccuracy in the wording of this letter, by someone admittedly acting without authorization of the DSCC, cannot bind the DSCC or influence its liability or the liability of any other donors under the Act. DSCC has made available to donors and to the Commission a precise explanation of "tally" and it acts promptly to correct any misunderstanding about "tally." DSCC does not accept earmark contributions and any contributions so earmarked are immediately returned to the contributor. At all times DSCC maintains full control over the funds that it raises and discretion in the expenditure of those monies.

**GENERAL LEGAL CONSIDERATIONS**

As we noted, the Commission has once before, 17 years ago, addressed directly the line of demarcation between "earmarking" and party fundraising under section 441a(d) which focuses appeals on the candidates who will benefit from strong party funding and also enlists those candidates in fundraising efforts. In MUR 377, the Commission concluded that a rulemaking would be required to clarify the issues and develop the appropriate legal standards distinguishing the permissible from the impermissible. The Commission has taken no action since then.

The standard remains, therefore, unelaborated and, for all practical purposes, unavailable to organizations such as DSCC. Yet DSCC depends vitally as a party organization on its known relationship to and support for candidates affiliated with the same political party.

In these circumstances, Courts have ruled that, in enforcing its governing statute, a federal agency must proceed in accordance with "ascertainable standards." See Pension Benefit Guaranty Corp. v. LTV Corp., 875 F.2d 1008, 1021 (2d Cir. 1987); Patachoque Nursing Center v. Bowen, 797 F.2d 1137, 1143 (2d Cir. 1986); Holmes v. New York City Housing Authority, 398 F.2d 262, 265 (2d Cir. 1968), cert. denied, 479 U.S. 1030 (1987); Baker-Chaput v. Cammett, 406 F.Supp. 1134, 1140 (D.N.H. 1976) ("The establishment of written, objective and ascertainable standards is an elementary and intrinsic part of due process.")

While a federal agency may establish such standards through adjudicatory proceeding or rulemaking, it may not act with uncontrolled discretion and absent an ascertainable standard by which parties are put on notice. See generally, Matlovich v. Secretary of the Air Force, 591 F.2d 852, 861 (D.C. Cir. 1978). Although courts have not dictated the use of one method over another, the advantages of rulemaking have been recognized. See e.g., Id. at 861; Standard Rate and Data Service, Inc. v. United States Postal Service, 584 F.2d 473 (D.C. Cir. 1978) ("...rulemaking assures that any modification in position will represent a generalized approach to a general problem, avoiding the uneasiness that results from the greater possibility of discrimination in a case-by case approach"...) (Leventhal, J., concurring).

The Commission has nonetheless addressed two cases bearing on the issues in this case. In MUR 2632, the Commission addressed the issue of earmarked contributions through a state party committee. This case is distinguishable from the matter before the Commission here, inasmuch as the Commission found in that case a clear designation of the funds by the contributor (despite denials of the contributor) and the apparent use of the funds, in fact, to benefit the designated candidate. Moreover, in MUR 2632, unlike this case, a condition of "earmarking" -- that the designation "results in" the contribution being spent in full to benefit the designated candidate -- appears to have been satisfied.



Lawrence Noble, Esq.  
August 17, 1994  
Page 6

95043690566

In a recent case, pre-MUR 261 (1994), the Commission considered a recommendation of the Office of General Counsel in the matter of a contribution made from surplus funds from the former Governor of Florida, Bob Martinez, to the Republican Party of Florida. Mr. Martinez forwarded the contribution to the Party with the stated "hope" that it would be used to support the Bush-Quayle Republican Presidential ticket. The General Counsel concluded that this statement bound the Party in the receipt of the funds, indicating that it was "earmarked for federal activity." See, First General Counsel's Report, at 7 (June 17, 1994). As a result, the party could not accept the contribution for the federal account (the amount far exceeding any limit available under the Act), or for the nonfederal account since the Martinez statement would preclude any use for nonfederal purposes. The Commission, however, rejected the OGC's recommendations by a vote of 5-0.

The Commission did not explain its rationale, but it should be apparent that the Martinez case presents "earmarking" elements not at all present in these DSCC matters. First Martinez (or his committee) was the donor, so unlike the case here, the statement made was the donor's and the donor's intent was squarely at issue. Second, the donor did make a statement, a clear one, of preference that the contribution be used for federal election related purposes. Third, the party received the contribution and apparently took no action to clarify the use it expected to make of the contribution.

So to the extent that pre-MUR 261 speaks at all to the issues in this case, it supports a dismissal of the claims made by NRSC against DSCC.



Robert F. Bauer  
B. Holly Schadler  
Counsel to Democratic  
Senatorial Campaign  
Committee

OLDAKER, RYAN & LEONARD

ATTORNEYS AT LAW

818 CONNECTICUT AVENUE, N.W.

SUITE 1100

WASHINGTON, D.C. 20006

(202) 728-1010

FACSIMILE (202) 728-4044

August 29, 1994

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

Re: MUR 4010  
The Honorable Dianne Feinstein  
Feinstein for Senate '94  
Michael J. Barrett, as treasurer

Dear Mr. Noble:

This letter is the response of Senator Dianne Feinstein, the Feinstein for Senate '94 Committee and Michael J. Barrett, as treasurer, (collectively referred to as the "Respondents") to the complaint filed with the Federal Election Commission on July 18, 1994, referenced as MUR 4010. This complaint alleges that the Honorable Dianne Feinstein, the Feinstein for Senate '94 Committee ("Committee"), Michael J. Barrett, as treasurer, and the Democratic Senatorial Campaign Committee ("DSCC") violated provisions of the Federal Election Campaign Act of 1971, as amended, ("FECA" or the "Act") in connection with a DSCC fundraiser in honor of Senator Feinstein. This complaint is yet another challenge by the Republicans to the DSCC tally system. For the reasons set forth below, this complaint is without merit and should be dismissed as to the Respondents.

The complaint alleges that contributions to the DSCC fundraising event on July 18, 1994, violated Section 441a of the Act because they were earmarked for Senator Feinstein's campaign. This is simply incorrect. The contributions made in connection with this event were not in any way earmarked, but were "tallied" to the Senator's account, a perfectly legal accounting method used by the DSCC. This validity of the DSCC tally is addressed fully in the DSCC response. Respondents did not receive any earmarked funds from the DSCC, and the complaint provides no evidence that the funds contributed to the DSCC in response to the Feinstein solicitations were contributed to the Feinstein Committee. Thus, this allegation is without merit and should be dismissed.

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OFFICE OF GENERAL  
COUNSEL  
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Senator Feinstein did attend the dinner and Respondents were aware that the contributions to the DSCC would be tallied to her account, as authorized by 441a(d) of the Act. Section 441a(d) recognizes the relationship between the parties and their candidates and permits party nominees to assist the party in raising funds. See 11 C.F.R. 102.5(a)(3). Therefore, it was perfectly permissible for the Senator to assist the DSCC in its fundraising efforts.

The complaint further alleges that the invitation to this event was improperly written on corporate stationery and lacked the required disclaimer. Since this event was a DSCC event and Senator Feinstein was merely a guest, Respondents did not write, review or authorize the invitation for the dinner. Because the Respondents did not have any involvement with the organization or solicitation for this event, the allegation does not set forth any conceivable violation by Respondents and should be dismissed.

In sum, while Senator Feinstein aided the DSCC in raising funds to make 441a(d) expenditures by attending the event, the Feinstein Committee did not solicit or receive any earmarked contributions from this event. The allegations made by the complaint are factually incorrect and legally without merit.

For these reasons and the circumstances mentioned above, the Respondents request that this complaint be dismissed and that the Commission take no further action in this matter.

Sincerely,



Lyn Utrecht

BEFORE THE FEDERAL ELECTION COMMISSION

**SENSITIVE**

In the Matter of	)	
	)	
Feinstein for Senate '94 and	)	
Michael J. Barrett, as	)	
treasurer	)	
Senator Dianne Feinstein	)	
Democratic Senatorial	)	
Campaign Committee and	)	MUR 3620 <sub>1</sub>
Donald J. Foley, as	)	MUR 4010 <sup>1</sup>
treasurer	)	
The Kamber Group, Incorporated	)	
Lynn Cutler	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

In MUR 3620, which involves the 1992 election cycle, this Office advised the Commission of a similar complaint concerning the 1994 election cycle, MUR 4010.<sup>2</sup> Specifically in MUR 4010, the National Republican Senatorial Committee (the "NRSC" or "Complainant") alleges violations of the Federal Election Campaign Act of 1971, as amended, (the "Act") and the Commission's regulations by Senator Feinstein; Feinstein for Senate '94 and Michael J. Barrett, as treasurer (the "Feinstein campaign"); and the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer (the "DSCC") concerning certain contributions made to the DSCC during the 1994 election cycle that were "tallied" to

1. This report will serve as the First General Counsel's Report for MUR 4010.

2. We indicated that we anticipated that this Office would be recommending the merger of these two matters after we had the opportunity to review the responses to the complaint in MUR 4010.

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Senator Feinstein's campaign. Attachment 1. These allegations are similar to those previously made by the NRSC against the Feinstein campaign and the DSCC concerning the 1992 cycle in MUR 3620.<sup>3</sup>

In addition, the NRSC alleges that The Kamber Group, Incorporated ("TKG") violated 2 U.S.C. § 441b by making corporate contributions to the Feinstein campaign, and that Senator Feinstein and the Feinstein campaign violated that provision by accepting these corporate contributions. Complainant also alleges that TKG, Senator Feinstein, the Feinstein campaign, and the DSCC violated Section 441d of the Act by failing to place the required disclaimer on a fundraising letter.

As discussed below, this Office recommends that the Commission find reason to believe that the Feinstein campaign and the DSCC violated certain sections of the Act and the Commission's regulations concerning the "tallied" contributions; we do not recommend pursuing the other alleged violations. Because MURs 3620 and 4010 involve the same complainant, two of the same respondents, and similar allegations, this Office further recommends that the Commission merge MUR 4010 into MUR 3620. This Office believes that this course of action will conserve the Commission's limited resources by permitting a single, comprehensive investigation of the tally system during both the 1992 and 1994 election cycles.

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3. MUR 3620 also includes allegations against the 1992 Abrams and Sanford election campaigns.

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II. ALLEGATIONS AND ANALYSIS

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In its complaint, the NRSC states that the Feinstein campaign conducted a \$1,500 per person fundraising dinner at the residence of lobbyist Lynn Cutler. In support, the NRSC attached an invitation to this dinner, dated June 27, 1994, which was on TKG's stationery. The invitation was signed by Ms. Cutler and, in pertinent part, states: "I am asking that you join the Women's Council of the Democratic Senate Campaign Committee as the price of dinner. You can 'tally' your membership to Senator Feinstein's campaign. This means that those dollars will go to her effort." Attachment 1 at 4. The NRSC alleges that the Feinstein campaign, the DSCC, and Senator Feinstein:

have violated or are about to violate the \$1,000 contribution limit of Section 441a of the Act, by accepting \$1,500 "earmarked" contributions from individuals laundered through DSCC which contributions DSCC will "tally" and spend on behalf of the Feinstein campaign. These contributions are in excess of any other donations by the same donors to Feinstein for Senate '94.

Id. at 2.

By using "corporate resources, including but not necessarily limited to corporate stationery," id., in connection with the June 27, 1994 invitation, the NRSC also alleges violations of 2 U.S.C. § 441b. Finally, the NRSC alleges that TKG, the Feinstein campaign, Senator Feinstein, and the DSCC "violated Section 441d of the Act by failing to place the required notice which informs the public who paid for the fundraising letter . . . and the fact that they [sic] were authorized by candidate

Feinstein." This Office received responses to the complaint from all Respondents.<sup>4</sup> See Attachments 2-4.

The June 27, 1994, invitation can be fairly read to state that contributions to the DSCC can be specifically designated for the Feinstein campaign. Specifically, the explanation, "[t]his means that those dollars will go to her effort," supports this conclusion. Accordingly, it appears that a contributor would reasonably interpret the invitation to mean that if she wishes to contribute to the Feinstein campaign, the donor need only join the DSCC's Women's Council as the price of the dinner and tally the \$1,500 membership fee to Senator Feinstein. Correspondingly, it appears that contributors who responded to the invitation and made "tallied" contributions to the DSCC on behalf of the Feinstein campaign intended to make and made earmarked contributions.

Accordingly, and as fully set forth in the Factual and Legal Analyses, it appears that the DSCC either: (1) failed to forward earmarked contributions within the applicable 10-day time limit, as set forth in 11 C.F.R. §§ 102.8 and 110.6(b)(2)(iii), and failed to report the original source and intended recipient to the Commission and to the intended recipient, as required by 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c)(1); or (2) if the contributions in question were passed through to the Feinstein campaign in the form of coordinated party expenditures, that the DSCC failed to report the source of the contributions and the

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4. Although the NRSC did not allege that Lynn Cutler had violated the Act, Ms. Cutler wrote and mailed the June 27, 1994 invitation. Accordingly, she was notified of the complaint as a Respondent.

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intended recipient to the Commission and to the intended recipient, in accordance with 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c)(1). Consequently, this Office recommends that the Commission find that there is reason to believe that the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, violated 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 110.6(c)(1), 110.6(b)(2)(iii), and 102.8.

Furthermore, assuming that the DSCC passed through the contributions in question, it appears that the Feinstein campaign failed to report the contributions as earmarked and to report the DSCC as the intermediary or conduit who forwarded earmarked contributions, as required by 11 C.F.R. § 110.6(c)(2). Moreover, to the extent such contributions came from: (1) a donor whose "tallied" contribution(s) exceeded the statutory maximum for an individual's contributions to a candidate; or (2) a donor who had already made the maximum contribution to the Feinstein campaign, it appears that the Feinstein campaign accepted excessive contributions in violation of 2 U.S.C. § 441a(f). Accordingly, this Office recommends that the Commission find that there is reason to believe that Feinstein for Senate '94 and Michael J. Barrett, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2).<sup>5</sup>

5. This Office does not know the identities of the individuals who may have made contributions to the Feinstein campaign that apparently exceeded the statutory limit. Nor are we recommending that the Commission pursue the individual contributors at this stage of the proceeding.

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It is uncontested that Lynn Cutler, a lobbyist and senior vice president of TKG, used its corporate stationery in the June 27, 1994 invitation for the dinner benefiting the Feinstein campaign. An affidavit from Ms. Cutler acknowledges that "I now realize I used The Kamber Group's ("TKG") corporate stationery incorrectly, but did not intend that this use should be construed as a corporate expenditure; I simply made a mistake." Attachment 4 at 3. She further avers that she "did not consult with TKG management about use of corporate letterhead for such purposes." Id. Correspondingly, the president and CEO of TKG, Victor Kamber, submitted an affidavit declaring that "neither [he] nor management of this company had knowledge of the invitation sent by Ms. Cutler, or the use of TKG stationery for the invitation. Ms. Cutler did not consult with me or the corporation's management or counsel about the use of corporate stationery for this purpose. Had she inquired she would have been informed that it was impermissible." Id. at 4. According to Ms. Cutler's affidavit and Mr. Kamber's affidavit, as soon as Ms. Cutler learned that a complaint had been filed, she notified her company about her use of the stationery, was billed for that use, and subsequently reimbursed TKG.

The responses from TKG and Ms. Cutler tacitly admit that there was a violation of the Act. Although TKG and Ms. Cutler state that the corporation was unaware of Ms. Cutler's use of the stationery, Ms. Cutler's position as senior vice president allowed her to "consent" to the use of corporate stationery. Because the use of this stationery constitutes a corporate in-kind

contribution which was received by the DSCC for the benefit of the Feinstein campaign, this Office recommends that the Commission find reason to believe that The Kamber Group, Incorporated; Lynn Cutler; the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer;<sup>6</sup> and Feinstein for Senate '94, and Michael J. Barrett, as treasurer, violated 2 U.S.C. § 441b.

This appears to have been an isolated instance of a corporate contribution, which involved little more than the use of TKG letterhead. Ms. Cutler did not use a corporate mailing list nor was it a corporate function. Instead, this was a home fundraiser hosted by a corporate officer who used corporate stationery without the knowledge or permission of the corporation. Had she inquired, she would have been advised that corporate stationery could not be used for this purpose. Under these circumstances and in light of the amount of the contribution, and the fact that it has been reimbursed, this Office further recommends that the Commission take no further action as to this violation.

In addition, although the June 27, 1994, dinner invitation expressly advocated the election of Senator Feinstein and the defeat of her opponent and solicited contributions on behalf of Senator Feinstein, it was not required to have a disclaimer.

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6. Although the NRSC did not allege that the DSCC had violated 2 U.S.C. § 441b, the invitation on TKG stationery was for a DSCC Women's Council dinner.

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Pursuant to 2 U.S.C. § 441d, disclaimers are only required for solicitations disseminated through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising. The invitation in this matter was for a dinner at the home of Ms. Cutler where "a small group of women" would meet with Senator Feinstein. Complainant does not allege that the invitation was broadly distributed nor is there any evidence to indicate that its distribution was other than limited -- in keeping with a dinner party at one's home. There is no indication that this dinner invitation was distributed through any form of general public political advertising. Accordingly, this Office recommends that the Commission find no reason to believe that The Kamber Group, Incorporated; Lynn Cutler; Feinstein for Senate '94 and Michael J. Barrett, as treasurer; and the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, violated 2 U.S.C. § 441d.

Complainant makes no allegations and presents no evidence to show that Senator Dianne Feinstein was personally involved in the alleged violations of the Act. Accordingly, this Office recommends that the Commission find no reason to believe, based upon the allegations of the complaint, that Senator Dianne Feinstein violated any provision of the Act.


Attached for the Commission's approval are Factual and Legal Analyses for the DSCC and the Feinstein campaign, which are patterned after the analyses previously approved by the Commission in MUR 3620, as well as a Factual and Legal Analysis for TKG.

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**III. RECOMMENDATIONS**

1. Merge MUR 4010 into MUR 3620, and hereafter refer to this matter as MUR 3620.
2. Find reason to believe that the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, violated 2 U.S.C. § 441a(a)(8); 11 C.F.R. § 110.6(c)(1); 11 C.F.R. § 110.6(b)(2)(iii); and 11 C.F.R. § 102.8.
3. Find reason to believe that Feinstein for Senate '94 and Michael J. Barrett, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2).
4. Find reason to believe that The Kamber Group, Incorporated; Lynn Cutler; the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer; and Feinstein for Senate '94 and Michael J. Barrett, as treasurer, violated 2 U.S.C. § 441b, but take no further action.
5. Find no reason to believe that The Kamber Group, Incorporated; Lynn Cutler; Feinstein for Senate '94 and Michael J. Barrett, as treasurer; and the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, violated 2 U.S.C. § 441d.
6. Based upon the allegations of the complaint, find no reason to believe that Senator Dianne Feinstein violated any provision of the Act.
7. Approve attached the Factual and Legal Analyses and appropriate letters.

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Date 3/2/95

  
Lawrence M. Noble  
General Counsel

**Attachments:**

1. Complaint
2. Response of DSCC
3. Response of Feinstein campaign
4. Response of The Kamber Group, Incorporated
5. Factual and Legal Analyses (3)

Staff assigned: Mary Ann Bumgarner  
Stephan O. Kline



FEDERAL ELECTION COMMISSION  
WASHINGTON, DC 20461

MEMORANDUM

TO: LAWRENCE M. NOBLE  
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS  
COMMISSION SECRETARY

DATE: MARCH 2, 1995

SUBJECT: MURS 3620/4010 - GENERAL COUNSEL'S REPORT  
DATED FEBRUARY 24, 1995.

The above-captioned document was circulated to the  
Commission on Monday, February 27, 1995 at 11:00 a.m..

Objection(s) have been received from the  
Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	<u>XXX</u>
Commissioner Elliott	<u>          </u>
Commissioner McDonald	<u>          </u>
Commissioner McGarry	<u>XXX</u>
Commissioner Potter	<u>XXX</u>
Commissioner Thomas	<u>XXX</u>

This matter will be placed on the meeting agenda  
for Tuesday, March 7, 1995 at 10:00 a.m.

Please notify us who will represent your Division before  
the Commission on this matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
Feinstein for Senate '94 and ) MUR 3620 AND  
Michael J. Barrett, as ) MUR 4010  
treasurer; )  
Senator Dianne Feinstein; )  
Democratic Senatorial Campaign )  
Committee and Donald J. Foley, )  
as treasurer; )  
The Kamber Group, Incorporated; )  
Lynn Cutler )

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on March 7, 1995, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions with respect to MUR 3620 and MUR 4010:

1. Merge MUR 4010 into MUR 3620, and hereafter refer to this matter as MUR 3620.
2. Find reason to believe that the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, violated 2 U.S.C. § 441a(a)(8); 11 C.F.R. § 110.6(c)(1); 11 C.F.R. § 110.6(b)(2)(iii); and 11 C.F.R. § 102.8.
3. Find reason to believe that Feinstein for Senate '94 and Michael J. Barrett, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2).

(continued)

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4. Find reason to believe that The Kamber Group, Incorporated; Lynn Cutler; the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer; and Feinstein for Senate '94 and Michael J. Barrett, as treasurer, violated 2 U.S.C. § 441b.
5. Find no reason to believe that The Kamber Group, Incorporated; Lynn Cutler; Feinstein for Senate '94 and Michael J. Barrett, as treasurer; and the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, violated 2 U.S.C. § 441d.
6. Based upon the allegations of the complaint in MUR 4010, find no reason to believe that Senator Dianne Feinstein violated any provision of the Act, and close the file.
7. Approve the Factual and Legal Analyses and appropriate letters as recommended in the General Counsel's memorandum dated March 2, 1995.

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

Attest:

3-8-95  
Date

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

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 17, 1995

Robert F. Bauer, Esquire  
Perkins Cole  
607 14th Street, N.W.  
Washington, DC 20005

RE: MUR 3620  
Democratic Senatorial  
Campaign Committee and  
Donald J. Foley, as treasurer

Dear Mr. Bauer:

On July 21, 1994, the Federal Election Commission notified your clients, the Democratic Senatorial Campaign Committee and Donald J. Foley, 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 March 7, 1995, found that there is reason to believe the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, violated 2 U.S.C. §§ 441a(a)(8) and 441b, provisions of the Act, and 11 C.F.R. §§ 110.6(c)(1), 110.6(b)(2)(iii), and 102.8 of the Commission's regulations. On that same date, the Commission also found no reason to believe the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, violated 2 U.S.C. § 441d. In addition, the Commission determined to merge MUR 4010 into MUR 3620, and hereafter refer to the entire matter as MUR 3620. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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 additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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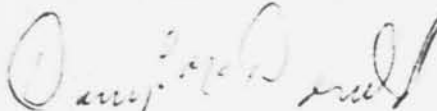
Mr. Bauer  
Page 2

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 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 Mary Ann Bumgarner or Stephan Kline, the attorneys assigned to this matter, at (202) 219-3400.

Sincerely,

  
Danny L. McDonald  
Chairman

Enclosure  
Factual & Legal Analysis

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FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Democratic Senatorial  
Campaign Committee  
and Donald J. Foley,  
as treasurer

MUR: 3620

I. GENERATION OF MATTER

This case arises from a complaint filed by the National Republican Senatorial Committee ("NRSC" or "Complainant") with the Federal Election Commission ("Commission") against the Democratic Senatorial Campaign Committee ("DSCC") and others. The central issue is whether certain contributions made to the DSCC were earmarked for Feinstein for Senate '94 ("Feinstein campaign").

The complaint challenges, inter alia, the DSCC's "tally system," an accounting method used to keep track of the total funds raised for the DSCC by a particular candidate. Complainant alleges that during the 1994 Senate race, the DSCC and Feinstein campaign:

violated or [were] about to violate the \$1,000 contribution limit of Section 441a of the Act, by accepting \$1,500 "earmarked" contributions from individuals laundered through DSCC which contributions DSCC will "tally" and spend on behalf of the Feinstein campaign. These contributions are in excess of any other donations by the same donors to Feinstein for Senate '94.

Complaint at 2. Complainant also cites to 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(a), which mandate that an "earmarked" contribution made through an intermediary be treated as a contribution from the donor to the candidate. Id. Last,

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Complainant alleges that the DSCC and others violated Section 441d of the Act by failing to place the required disclaimer on a fundraising letter. Id.

## II. FACTUAL AND LEGAL ANALYSIS

### A. The Act

The Federal Election Campaign Act of 1971, as amended, ("the Act") establishes dollar limits on contributions to candidates for Federal office. An individual may not contribute to a candidate (and the candidate's authorized committees) more than \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). In addition, an individual may contribute up to \$20,000 per calendar year to political committees established and maintained by a national political party that are not the authorized political committees of any candidate. 2 U.S.C. § 441a(a)(1)(B). The Act further provides that a candidate may not knowingly accept, and a political committee may not knowingly make, a contribution or expenditure in violation of the provisions of the Act. 2 U.S.C. § 441a(f).

A contribution made by a person, either directly or indirectly, on behalf of a particular candidate, which is in any way earmarked or otherwise directed through an intermediary or conduit, shall be treated as a contribution from such person to the candidate. 2 U.S.C. § 441a(a)(8). "Earmarked" means "a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee." 11 C.F.R. § 110.6(b)(1).

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A "conduit" or "intermediary" means any person who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee (with certain exceptions not applicable here). 11 C.F.R. § 110.6(b)(2). In addition, 11 C.F.R. § 110.6(b)(2)(iii) provides that any person who receives an earmarked contribution shall, among other requirements, forward such earmarked contribution to the candidate or authorized committee in accordance with 11 C.F.R. § 102.8. Section 102.8 provides, inter alia, that earmarked contributions must be forwarded no later than 10 days after receipt.

Furthermore, the intermediary or conduit of an earmarked contribution must report the source of the contribution and the intended recipient to the Federal Election Commission and to the intended recipient. 2 U.S.C. § 441a(a)(8). See also 11 C.F.R. § 110.6(c)(1). Similarly, the recipient candidate committee must report earmarked contributions and each conduit or intermediary who forwards one or more earmarked contributions which in the aggregate exceed \$200 in any calendar year in accordance with 11 C.F.R. § 110.6(c)(2).

The Act also authorizes the national and state committees of a political party to make additional expenditures in support of that party's candidates for Federal office:

Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, . . . may make expenditures in connection with the general



election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2) and (3) of this subsection.

2 U.S.C. § 441a(d)(1).

Paragraph (2) of this subsection applies to Presidential candidates and is not relevant here. Paragraph (3), which concerns candidates for Senate, provides that the national and state committees of a political party may each make expenditures which do not exceed the greater of \$20,000 or two cents multiplied by the voting age population of the state. See 2 U.S.C. § 441a(d)(3)(A) and 11 C.F.R. §§ 110.7(b)(1) and (b)(2)(i). These expenditures are generally referred to as "441a(d) expenditures" or "coordinated party expenditures." If a state party committee chooses not to make the expenditures permitted by section 441a(d), it may designate an agent, such as a national committee of the party, to make coordinated party expenditures on its behalf. FEC v. Democratic Senatorial Campaign Comm., 454 U.S. 27 (1981). The national committees cannot make independent expenditures in connection with the general election campaign of a candidate for Federal office. 11 C.F.R. § 110.7(b)(4).

Pursuant to 2 U.S.C. § 441b(a), a corporation is prohibited from making a contribution or expenditure in connection with a federal election. The Act also prohibits officers or directors of a corporation from consenting to any contribution or expenditure by the corporation. 2 U.S.C. § 441b(a). The Act reflects the fact that a corporation can only act through its officers, directors and other agents and that these actions can be imputed to the corporation itself. A political committee is prohibited

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from knowingly accepting any contribution prohibited by 2 U.S.C. § 441b. See also, 11 C.F.R. § 114.2.

The term "contribution" is defined at 2 U.S.C. § 431(8)(A) to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. The term "expenditure" is defined at 2 U.S.C. § 431(9)(A) and 11 C.F.R. § 100.8(a)(1) to include any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for federal office. In this context the term "anything of value" includes all in-kind contributions. 11 C.F.R. § 100.8(a)(1)(iv)(A).

In addition, under 2 U.S.C. § 441d(a), whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, the communication shall state who paid for and authorized it.

#### B. The Complaint

Complainant alleges that the Feinstein campaign conducted a \$1,500 per person fundraising dinner at the residence of lobbyist Lynn Cutler. In support, Complainant provided a copy of an invitation, dated June 27, 1994, which was on TKG stationery. The invitation was signed by Ms. Cutler and, in pertinent part,

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states: "I am asking that you join the Women's Council of the Democratic Senate Campaign Committee as the price of dinner. You can 'tally' your membership to Senator Feinstein's campaign. This means that those dollars will go to her effort." The NRSC alleges that the Feinstein campaign and the DSCC:

violated or [were] about to violate the \$1,000 contribution limit of Section 441a of the Act, by accepting \$1,500 "earmarked" contributions from individuals laundered through DSCC which contributions DSCC will "tally" and spend on behalf of the Feinstein campaign. These contributions are in excess of any other donations by the same donors to Feinstein for Senate '94.

Complaint at 2.

By using "corporate resources, including but not necessarily limited to corporate stationery," id., in connection with the June 27, 1994 invitation, the NRSC also alleges violations of 2 U.S.C. § 441b. Finally, Complainant alleges that the DSCC and others "violated Section 441d of the Act by failing to place the required notice which informs the public who paid for the fundraising letter . . . and the fact that they [sic] were authorized by candidate Feinstein." Id.

C. The DSCC's Response

Broadly stated, the DSCC denies that the tallied contributions were earmarked because they were not "passed through" to the Feinstein campaign. It argues that the designation for a candidate's tally sheet did not restrict the DSCC's discretion to determine where its money would be expended.

Specifically, the DSCC explains that the "Tally Sheet" is an accounting process established to allow the DSCC to keep track of

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the amount of money raised for the DSCC by a particular candidate. DSCC Response at 2. That total is then taken into consideration as one of several factors used when the DSCC makes funding decisions for the coordinated party expenditures authorized by 2 U.S.C. § 441a(d). Id. According to the DSCC, tallied contributions are not segregated from other funds. All tallied contributions (and all other contributions) are deposited into the DSCC's general bank accounts and used entirely at the DSCC's discretion. Id. Furthermore, the DSCC states that money tallied for a specific candidate is neither "passed through" to the candidate nor spent on a dollar-for-dollar exchange for the amount raised by a candidate. Id. On the contrary, the DSCC submits that its express policy is to refuse earmarked donations. When it receives a donation that appears to be earmarked, the DSCC sends a form letter intended to clarify the contributor's intent. In support, the DSCC references two sample form letters attached to its response in MUR 3620. Id. Apart from the fact that the form letters refer to different candidates, the text in the letters is identical. One reads, in part:

Thank you for your contribution to the  
Democratic Senatorial Campaign Committee. . . .

On the check you designate the contribution to Dianne Feinstein. We assume that you intend the "tallying" or crediting of the contribution to Dianne Feinstein, which will be taken into account by DSCC in allocating funds in support of his [sic] re-election. Contributions "tallied" to a Senator are a significant factor in the Committee's allocation decisions.

We note that the amount to be allocated is decided by the DSCC within its discretion. For this reason the DSCC does not treat a

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contribution such as yours as "earmarked" and does not accept earmarked contributions.

If you have a different expectation about the uses of this contribution, we will promptly refund it to you at your request. Please advise if this is the case.

If you have any questions, please do not hesitate to contact me . . . .

Sincere thanks,

(signed)  
Grace M. Coyle  
Finance Assistant

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According to the DSCC, tallied funds deposited into DSCC accounts are used for any of the DSCC's most pressing expenses, such as administrative expenses or 441a(d) expenditures on behalf of another candidate. Id. The DSCC proffers that there have been candidates who raised large amounts of money for the DSCC, but received little or no 441a(d) funding in return (such as a barely challenged incumbent Senator). In other cases, some candidates who raised little or no money for the DSCC received full funding under the limits established for coordinated party expenditures. Id.

The DSCC further proffers that it considers a variety of factors in determining which candidates will receive 441a(d) funding. It looks at:

- Whether the race is winnable;
- Whether the candidate has a serious challenger;
- Whether the candidate has been successful in raising funds for his or her own campaign;
- Whether the candidate has assisted the DSCC in its fundraising efforts; and



-- Whether the DSCC has more pressing expenditures that must be made.

Id. at 3. According to the DSCC, these criteria have been repeatedly emphasized to contributors and candidates. Id. It contends that, "the significance of the tally, in short, is its role as an incentive to its candidates to support its fundraising efforts." Id.

The DSCC also cites to MUR 377, in which it was alleged that a state party committee accepted earmarked contributions when it sponsored a fundraiser for the express purpose of assisting a defeated candidate to retire his campaign debt. In that case, the Commission found no probable cause to believe that the state party committee or the candidate's committee committed the alleged violations, and it directed this Office to draft appropriate regulations governing the applicability of the earmarking statute to section 441a(d) expenditures. It appears, however, that a rulemaking proceeding was never completed. The DSCC contends that "the standard remains, therefore, unelaborated and for all practical purposes, unavailable to organizations such as DSCC. Yet DSCC depends vitally as a party organization on its known relationship to and support for candidates affiliated with the same political party." Id. at 5. The DSCC further argues that under such circumstances, courts have ruled that in enforcing its governing statute, "a federal agency must proceed in accordance with "'ascertainable standards.'" Id.

Despite its argument of an unascertainable standard, the DSCC then addresses the issue of earmarking as it has arisen in

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cases since MUR 377. Specifically, the DSCC argues that this case is distinguishable from both MUR 2632 and pre-MUR 261. First, the DSCC argues that MUR 2632 is distinguishable from the instant matter because the Commission found in that case a clear designation of the funds by the contributor and the apparent use of these funds for the benefit of that candidate. In MUR 2632, the Commission found a \$2,500 contribution to a state party committee to be earmarked when the cover letter enclosing the check stated that the contribution was to "help in the election of John Evans to the United States Senate"; upon receipt of the contribution, the state party committee expended more than \$12,000 on behalf of candidate John Evans for an "election day mailgram" and made other expenditures which appeared to relate to get-out-the-vote activities on behalf of Evans.

The DSCC also contends that pre-MUR 261 is distinguishable from this case. Pre-MUR 261 involved a contribution made from surplus funds of the former governor of Florida to the Republican Party of Florida. Specifically, the former governor forwarded a contribution to the Party with the stated "hope" that it would be used to support the Bush/Quayle ticket. The General Counsel's recommendations were based on the theory that this contribution was earmarked; the Commission did not adopt the recommendations. The DSCC argues that pre-MUR 261 "presents 'earmarking' elements not at all present in these DSCC matters." Id. at 6. Specifically, the DSCC asserts that the donor's intent was apparent in pre-MUR 261, unlike in this matter; the donor made a clear statement of preference that the contribution be used for

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federal purposes; and the party received the contribution and took no action to clarify its use.

Finally, the DSCC asserts that although the DSCC Women's Council is a project of the DSCC dedicated to the support of women seeking Federal office, Ms. Cutler acted without authorization of the DSCC. The DSCC concedes there may be concern about the language of the invitation -- specifically, that the wording "would encourage donors to believe that a 'tally' was an 'earmarking' instruction or to 'earmark' their contributions" -- but that Ms. Cutler acted without authorization. Id. at 4. The DSCC argues that any inaccuracy in the wording of this letter, by someone "admittedly<sup>1</sup> acting without authorization of the DSCC" cannot bind the DSCC or influence its liability. Id. The DSCC maintains that it has made available to its donors a precise explanation of "tally," and it acts promptly to correct any donor misunderstanding of the tally system. Id.

### III. DISCUSSION

The available evidence supports the conclusion that the request for "tallied" contributions was, in fact, a solicitation for earmarked contributions. Correspondingly, it also supports a reason to believe finding that contributors who responded to the invitation intended that their tallied contributions be earmarked for the Feinstein campaign. Therefore, the contributions should have been treated as earmarked, viz. forwarded to the recipient

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1. Although the DSCC contends that Ms. Cutler has acknowledged that her representations were not authorized by the DSCC, it has offered nothing in support of this contention.

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candidate committees within 10 days, reported as earmarked by the conduit and the recipient, and applied to each contributor's limit to the Feinstein campaign.<sup>2</sup>

As the DSCC acknowledges, the invitation to the DSCC Women's Council dinner can be fairly read to state that tallied contributions to the DSCC will be designated for the Feinstein campaign. First, the invitation states that by joining the DSCC Women's Council, a donor can "tally" her membership fee of \$1,500 to the Feinstein campaign. Even more telling is the statement in the invitation explaining what it means to "tally your membership": "This means that those dollars will go to her effort." The invitation further states that:

The membership fee in the Women's Council is \$1500. I know that if you are not accustomed to political contributing, that it seems like a great deal of money. It is a great deal of money. But when you consider that Dianne must raise at least \$15 million dollars in order to be competitive with Huffington, this becomes an important investment.

It appears that a contributor would reasonably interpret this invitation to mean that if she wishes to contribute to the Feinstein campaign, the donor need only join the DSCC Women's Council and tally the \$1,500 membership fee to Senator Feinstein's campaign. Correspondingly, it further appears that contributors who responded to this invitation and tallied their DSCC Women's Council membership to Senator Feinstein intended to make and made earmarked contributions.

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2. See 2 U.S.C. § 441a(a)(8); and 11 C.F.R. §§ 110.6(b)(2)(iii), 102.8, and 110.6(c)(2).

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None of the arguments presented by the DSCC overcomes this conclusion. First, the DSCC's letter to contributors purportedly refusing earmarked donations does not refute the finding that the contributors intended that their tallied contributions be earmarked, nor does it properly "correct" such an intention. To begin with, this letter puts the onus on the contributor by requiring that the contributor take the affirmative step of contacting the DSCC if he or she has "a different expectation" about the uses of the contribution. It can be expected that many contributors would simply not bother to exert the effort to obtain a refund. Moreover, this letter is less than clear; it recognizes the previous designation to Dianne Feinstein and, to the extent it contradicts the Women's Council's solicitation, it does so only if the reader understands the DSCC's proposed distinction between "earmarking" and "designation." Despite the DSCC's proffer that its policy is to refuse earmarked contributions, at this stage of the proceedings, it still appears that sending a contribution that is "tallied" for a specific candidate to the DSCC constitutes earmarking.

Next, the DSCC's arguments distinguishing this matter from the apparently "ascertainable standards" applied in MUR 2632 and pre-MUR 261 are unpersuasive. As noted by the DSCC, the Commission in pre-MUR 261 did not explain its rationale in declining to open a MUR. Because the Commission did not articulate its reasons for not adopting the recommendations of the Office of General Counsel, the case has no precedential value. Assuming, for the sake of argument, that pre-MUR 261 speaks to

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this case -- as the DSCC contends -- it does not support dismissal of this matter. In that case, excess campaign funds were transferred to the state party with the expressed "hope" that they would be used for the Bush/Quayle re-election campaign. In contrast to "hope," the DSCC Women's Council's dinner invitation clearly states that the \$1,500 membership fee to join the Women's Council can be tallied to Senator Feinstein, which "means that those dollars will go to her effort." A contributor who tallied money in response to this invitation would reasonably expect that the contribution would literally "go to" the Feinstein campaign.

The DSCC attempts to distinguish the "earmarking elements" present in pre-MUR 261 by arguing that, unlike here, the statement of "hope" made was the donor's. Under the facts of this case, however, that is a distinction without significance because in contrast to an expression of hope -- and far more compelling than a "hope" -- is a contribution made in response to the promise that "those dollars will go to" Senator Feinstein's campaign.

This matter is much more similar to the other case cited by the DSCC, MUR 2632, in which the contribution was given to help the election of a particular candidate.<sup>3</sup> The DSCC attempts to distinguish that case by arguing that "unlike this case, a condition of 'earmarking' -- that the designation 'results in' the

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3. Of note, the DSCC failed to include another case decided after MUR 377 which involved earmarking. See MUR 752 (1978) (contributions found to be earmarked when the date and amount of a contribution by a non-profit corporation whose avowed purpose was to raise funds for a particular Senate candidate coincided almost exactly with the date and amount of the coordinated party expenditures made by the State committee on behalf of that candidate).



contribution being spent in full to benefit the designated candidate -- appears to have been satisfied." Id. at 5. This is simply a misstatement of the law. A contribution is still earmarked even if the contributor's designation results in only part of the contribution being passed through. 11 C.F.R. § 110.6(b)(1) (defining "earmarked" as a designation or encumbrance, whether express or implied, which results in "all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee") (emphasis added).

Finally, the DSCC contends that Ms. Cutler was "not authorized by the DSCC" to send this invitation. The DSCC, however, does not deny that it collected membership fees and contributions in response to this invitation. Instead, it contends that tallied contributions are not earmarked.

Further, the DSCC provides no support for its contention that Ms. Cutler was "admittedly acting without authorization of the DSCC" in issuing the DSCC Women's Council's invitation. In fact, to the contrary, the invitation itself indicates that Senator Barbara Boxer, Co-chair of the DSCC Women's Council, was "cc'd" on the letter.

In summary, it appears that contributors who made tallied contributions in response to the solicitation to join the DSCC Women's Council could reasonably intend and expect that their contributions tallied to Senator Feinstein would be used to support the Feinstein campaign. Therefore, it appears that donors who made a contribution to the DSCC designated for the Feinstein

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campaign's "tally account" intended at least an "implied encumbrance" within the meaning of the earmarking regulation, 11 C.F.R. § 110.6(b)(1). Correspondingly, it appears that the DSCC was the intended intermediary or conduit of the earmarked contributions within the meaning of 11 C.F.R. § 110.6(b)(2).

Because it appears that in response to this solicitation the contributors earmarked their "tallied" contributions, there is reason to believe that the DSCC violated several provisions of the Act and the regulations. Assuming that the tallied contributions were not "passed through" to the designated candidate, as the DSCC contends, it appears that the DSCC failed to forward earmarked contributions to the candidate or candidate committee within the 10-day time period prescribed by 11 C.F.R. §§ 102.8 and 110.6(b)(2)(iii) and failed to report them in accordance with 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c)(1).

On the other hand, if the tallied contributions were "passed through" to the candidate in the form of coordinated party expenditures, it appears that the DSCC failed to report the source of the contribution and the intended recipient to the Federal Election Commission and to the intended recipient, as required by 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c)(1). Accordingly, there is reason to believe that the DSCC and Donald J. Foley, as treasurer, violated 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 110.6(c)(1), 110.6(b)(2)(iii), and 102.8.

In regard to the alleged Section 441b violation, it is uncontested that Lynn Cutler, a lobbyist and senior vice president of TKG, used its corporate stationery in the June 27, 1994,

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invitation for the DSCC dinner benefiting the Feinstein campaign. Although the corporation was apparently unaware of Ms. Cutler's use of the stationery, Ms. Cutler's position as senior vice president allowed her to "consent" to the use of corporate stationery. After the complaint was filed in this matter, Ms. Cutler reimbursed TKG for the use of the stationery. Because the use of this stationery constitutes an in-kind corporate contribution received by the DSCC, there is reason to believe that the DSCC and Donald J. Foley, as treasurer, violated 2 U.S.C. § 441b.

Turning to the Section 441d allegation, it seems apparent that the dinner invitation expressly advocated the election of Senator Feinstein and the defeat of her opponent and solicited contributions on behalf of Senator Feinstein; it was not, however, required to have a disclaimer under 2 U.S.C. § 441d. Pursuant to that section, disclaimers are only required for communications disseminated through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising. The invitation in this matter was for a dinner at the home of Ms. Cutler where "a small group of women" would meet with Senator Feinstein. Complainant does not allege that the invitation was broadly distributed nor is there any evidence to indicate that its distribution was other than limited -- in keeping with a dinner party at one's home. There is no indication that this dinner invitation was distributed through any form of general public political advertising. Accordingly, there is no

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reason to believe that the DSCC and Donald J. Foley, as treasurer, violated 2 U.S.C. § 441d.

MERGER OF MURS

After finding reason to believe that violations occurred in MUR 4010, the Commission voted to merge MUR 4010 into MUR 3620 and to hereafter refer to the entire matter as MUR 3620.

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FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

March 17, 1995

Lyn Utrecht, Esquire  
Oldaker, Ryan & Leonard  
818 Connecticut Avenue, N.W.  
Suite 1100  
Washington, DC 20006

RE: MUR 3620  
Feinstein for Senate '94  
and Michael J. Barrett, as  
treasurer

Dear Ms. Utrecht:

On July 21, 1994, the Federal Election Commission notified your clients, Feinstein for Senate '94 and Michael J. Barrett, 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 March 7, 1995, found that there is reason to believe Feinstein for Senate '94 and Michael J. Barrett, as treasurer, violated 2 U.S.C. §§ 441a(f) and 441b, provisions of the Act, and 11 C.F.R. § 110.6(c)(2) of the Commission's regulations. On that same date, the Commission also found no reason to believe that Feinstein for Senate '94 and Michael J. Barrett, as treasurer, violated 2 U.S.C. § 441d. In addition, the Commission also determined to merge MUR 4010 into MUR 3620, and hereafter refer to the entire matter as MUR 3620. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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 additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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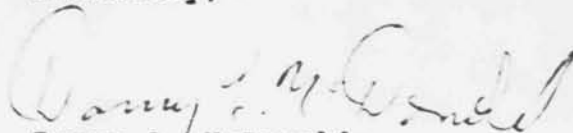
Ms. Utrecht  
Page 2

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 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 Mary Ann Bumgarner or Stephan Kline, the attorneys assigned to this matter, at (202) 219-3400.

Sincerely,

  
Danny L. McDonald  
Chairman

Enclosure  
Factual & Legal Analysis

cc: The Honorable Dianne Feinstein

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Feinstein for Senate '94 and  
Michael J. Barrett,  
as treasurer

MUR: 3620

I. GENERATION OF MATTER

This case arises from a complaint filed by the National Republican Senatorial Committee ("NRSC" or "Complainant") with the Federal Election Commission ("Commission") against Feinstein for Senate '94 ("Feinstein campaign") and others. The central issue is whether certain contributions made to the the Democratic Senatorial Campaign Committee ("DSCC") were earmarked for the Feinstein campaign.

The complaint challenges, inter alia, the DSCC's "tally system," an accounting method used to keep track of the total funds raised for the DSCC by a particular candidate. Complainant alleges that during the 1994 Senate race, the DSCC and Feinstein campaign:

violated or [were] about to violate the \$1,000 contribution limit of Section 441a of the Act, by accepting \$1,500 "earmarked" contributions from individuals laundered through DSCC which contributions DSCC will "tally" and spend on behalf of the Feinstein campaign. These contributions are in excess of any other donations by the same donors to Feinstein for Senate '94.

Complaint at 2. Complainant also cites to 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(a), which mandate that an "earmarked" contribution made through an intermediary be treated as a contribution from the donor to the candidate. Id. In addition,

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the NRSC alleges that the Feinstein campaign accepted corporate contributions from The Kamber Group, Incorporated ("TKG"), in violation of 2 U.S.C. § 441b. Id. Last, Complainant alleges that the Feinstein Campaign and others violated Section 441d of the Act by failing to place the required disclaimer on a fundraising letter. Id.

## II. FACTUAL AND LEGAL ANALYSIS

### A. The Act

The Federal Election Campaign Act of 1971, as amended, ("the Act") establishes dollar limits on contributions to candidates for Federal office. An individual may not contribute to a candidate (and the candidate's authorized committees) more than \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). In addition, an individual may contribute up to \$20,000 per calendar year to political committees established and maintained by a national political party that are not the authorized political committees of any candidate. 2 U.S.C. § 441a(a)(1)(B). The Act further provides that a candidate may not knowingly accept, and a political committee may not knowingly make, a contribution or expenditure in violation of the provisions of the Act. 2 U.S.C. § 441a(f).

A contribution made by a person, either directly or indirectly, on behalf of a particular candidate, which is in any way earmarked or otherwise directed through an intermediary or conduit, shall be treated as a contribution from such person to the candidate. 2 U.S.C. § 441a(a)(8). "Earmarked" means "a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in

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all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee." 11 C.F.R. § 110.6(b)(1).

A "conduit" or "intermediary" means any person who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee (with certain exceptions not applicable here). 11 C.F.R. § 110.6(b)(2). In addition, 11 C.F.R. § 110.6(b)(2)(iii) provides that any person who receives an earmarked contribution shall, among other requirements, forward such earmarked contribution to the candidate or authorized committee in accordance with 11 C.F.R. § 102.8. Section 102.8 provides, inter alia, that earmarked contributions must be forwarded no later than 10 days after receipt.

Furthermore, the intermediary or conduit of an earmarked contribution must report the source of the contribution and the intended recipient to the Federal Election Commission and to the intended recipient. 2 U.S.C. § 441a(a)(8). See also 11 C.F.R. § 110.6(c)(1). Similarly, the recipient candidate committee must report earmarked contributions and each conduit or intermediary who forwards one or more earmarked contributions which in the aggregate exceed \$200 in any calendar year in accordance with 11 C.F.R. § 110.6(c)(2).

The Act also authorizes the national and state committees of a political party to make additional expenditures in support of that party's candidates for Federal office:

Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State

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committee of a political party, . . . may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2) and (3) of this subsection.

2 U.S.C. § 441a(d)(1).

Paragraph (2) of this subsection applies to Presidential candidates and is not relevant here. Paragraph (3), which concerns candidates for Senate, provides that the national and state committees of a political party may each make expenditures which do not exceed the greater of \$20,000 or two cents multiplied by the voting age population of the state. See 2 U.S.C. § 441a(d)(3)(A) and 11 C.F.R. §§ 110.7(b)(1) and (b)(2)(i). These expenditures are generally referred to as "441a(d) expenditures" or "coordinated party expenditures." If a state party committee chooses not to make the expenditures permitted by section 441a(d), it may designate an agent, such as a national committee of the party, to make coordinated party expenditures on its behalf. FEC v. Democratic Senatorial Campaign Comm., 454 U.S. 27 (1981). The national committees cannot make independent expenditures in connection with the general election campaign of a candidate for Federal office. 11 C.F.R. § 110.7(b)(4).

Pursuant to 2 U.S.C. § 441b(a), a corporation is prohibited from making a contribution or expenditure in connection with a federal election. The Act also prohibits officers or directors of a corporation from consenting to any contribution or expenditure by the corporation. 2 U.S.C. § 441b(a). The Act reflects the fact that a corporation can only act through its officers, directors and other agents and that these actions can be imputed

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to the corporation itself. A political committee is prohibited from knowingly accepting any contribution prohibited by 2 U.S.C. § 441b. See also, 11 C.F.R. § 114.2.

The term "contribution" is defined at 2 U.S.C. § 431(8)(A) to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. The term "expenditure" is defined at 2 U.S.C. § 431(9)(A) and 11 C.F.R. § 100.8(a)(1) to include any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for federal office. In this context the term "anything of value" includes all in-kind contributions. 11 C.F.R. § 100.8(a)(1)(iv)(A).

In addition, under 2 U.S.C. § 441d(a), whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, the communication shall state who paid for and authorized it.

B. The Complaint

Complainant alleges that the Feinstein campaign conducted a \$1,500 per person fundraising dinner at the residence of lobbyist Lynn Cutler. In support, Complainant provided a copy of an invitation, dated June 27, 1994, which was on TKG stationery. The

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invitation was signed by Ms. Cutler and, in pertinent part, states: "I am asking that you join the Women's Council of the Democratic Senate Campaign Committee as the price of dinner. You can 'tally' your membership to Senator Feinstein's campaign. This means that those dollars will go to her effort." The NRSC alleges that the Feinstein campaign and the DSCC:

violated or [were] about to violate the \$1,000 contribution limit of Section 441a of the Act, by accepting \$1,500 "earmarked" contributions from individuals laundered through DSCC which contributions DSCC will "tally" and spend on behalf of the Feinstein campaign. These contributions are in excess of any other donations by the same donors to Feinstein for Senate '94.

Complaint at 2.

By using "corporate resources, including but not necessarily limited to corporate stationery," id., in connection with the June 27, 1994 invitation, the NRSC alleges violations of 2 U.S.C. § 441b by the Feinstein campaign. Finally, Complainant alleges that the Feinstein campaign and others "violated Section 441d of the Act by failing to place the required notice which informs the public who paid for the fundraising letter . . . and the fact that they [sic] were authorized by candidate Feinstein." Id.

C. The DSCC's Response

Broadly stated, the DSCC denies that the tallied contributions were earmarked because they were not "passed through" to the Feinstein campaign. It argues that the designation for a candidate's tally sheet did not restrict the DSCC's discretion to determine where its money would be expended.

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Specifically, the DSCC explains that the "Tally Sheet" is an accounting process established to allow the DSCC to keep track of the amount of money raised for the DSCC by a particular candidate. DSCC Response at 2. That total is then taken into consideration as one of several factors used when the DSCC makes funding decisions for the coordinated party expenditures authorized by 2 U.S.C. § 441a(d). Id. According to the DSCC, tallied contributions are not segregated from other funds. All tallied contributions (and all other contributions) are deposited into the DSCC's general bank accounts and used entirely at the DSCC's discretion. Id. Furthermore, the DSCC states that money tallied for a specific candidate is neither "passed through" to the candidate nor spent on a dollar-for-dollar exchange for the amount raised by a candidate. Id. On the contrary, the DSCC submits that its express policy is to refuse earmarked donations. When it receives a donation that appears to be earmarked, the DSCC sends a form letter intended to clarify the contributor's intent. In support, the DSCC references two sample form letters attached to its response in MUR 3620. Id. Apart from the fact that the form letters refer to different candidates, the text in the letters is identical. One reads, in part:

Thank you for your contribution to the  
Democratic Senatorial Campaign Committee. . . .

On the check you designate the contribution to Dianne Feinstein. We assume that you intend the "tallying" or crediting of the contribution to Dianne Feinstein, which will be taken into account by DSCC in allocating funds in support of his [sic] re-election. Contributions "tallied" to a Senator are a significant factor in the Committee's allocation decisions.

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We note that the amount to be allocated is decided by the DSCC within its discretion. For this reason the DSCC does not treat a contribution such as yours as "earmarked" and does not accept earmarked contributions.

If you have a different expectation about the uses of this contribution, we will promptly refund it to you at your request. Please advise if this is the case.

If you have any questions, please do not hesitate to contact me . . . .

Sincere thanks,

(signed)  
Grace M. Coyle  
Finance Assistant

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According to the DSCC, tallied funds deposited into DSCC accounts are used for any of the DSCC's most pressing expenses, such as administrative expenses or 441a(d) expenditures on behalf of another candidate. Id. The DSCC proffers that there have been candidates who raised large amounts of money for the DSCC, but received little or no 441a(d) funding in return (such as a barely challenged incumbent Senator). In other cases, some candidates who raised little or no money for the DSCC received full funding under the limits established for coordinated party expenditures. Id.

The DSCC further proffers that it considers a variety of factors in determining which candidates will receive 441a(d) funding. It looks at:

- Whether the race is winnable;
- Whether the candidate has a serious challenger;
- Whether the candidate has been successful in raising funds for his or her own campaign;

- Whether the candidate has assisted the DSCC in its fundraising efforts; and
- Whether the DSCC has more pressing expenditures that must be made.

Id. at 3. According to the DSCC, these criteria have been repeatedly emphasized to contributors and candidates. Id. It contends that, "the significance of the tally, in short, is its role as an incentive to its candidates to support its fundraising efforts." Id.

The DSCC also cites to MUR 377, in which it was alleged that a state party committee accepted earmarked contributions when it sponsored a fundraiser for the express purpose of assisting a defeated candidate to retire his campaign debt. In that case, the Commission found no probable cause to believe that the state party committee or the candidate's committee committed the alleged violations, and it directed this Office to draft appropriate regulations governing the applicability of the earmarking statute to section 441a(d) expenditures. It appears, however, that a rulemaking proceeding was never completed. The DSCC contends that "the standard remains, therefore, unelaborated and for all practical purposes, unavailable to organizations such as DSCC. Yet DSCC depends vitally as a party organization on its known relationship to and support for candidates affiliated with the same political party." Id. at 5. The DSCC further argues that under such circumstances, courts have ruled that in enforcing its governing statute, "a federal agency must proceed in accordance with "'ascertainable standards.'" Id.

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Despite its argument of an unascertainable standard, the DSCC then addresses the issue of earmarking as it has arisen in cases since MUR 377. Specifically, the DSCC argues that this case is distinguishable from both MUR 2632 and pre-MUR 261. First, the DSCC argues that MUR 2632 is distinguishable from the instant matter because the Commission found in that case a clear designation of the funds by the contributor and the apparent use of these funds for the benefit of that candidate. In MUR 2632, the Commission found a \$2,500 contribution to a state party committee to be earmarked when the cover letter enclosing the check stated that the contribution was to "help in the election of John Evans to the United States Senate"; upon receipt of the contribution, the state party committee expended more than \$12,000 on behalf of candidate John Evans for an "election day mailgram" and made other expenditures which appeared to relate to get-out-the-vote activities on behalf of Evans.

The DSCC also contends that pre-MUR 261 is distinguishable from this case. Pre-MUR 261 involved a contribution made from surplus funds of the former governor of Florida to the Republican Party of Florida. Specifically, the former governor forwarded a contribution to the Party with the stated "hope" that it would be used to support the Bush/Quayle ticket. The General Counsel's recommendations were based on the theory that this contribution was earmarked; the Commission did not adopt the recommendations. The DSCC argues that pre-MUR 261 "presents 'earmarking' elements not at all present in these DSCC matters." Id. at 6. Specifically, the DSCC asserts that the donor's intent was

apparent in pre-MUR 261, unlike in this matter; the donor made a clear statement of preference that the contribution be used for federal purposes; and the party received the contribution and took no action to clarify its use.

Finally, the DSCC asserts that although the DSCC Women's Council is a project of the DSCC dedicated to the support of women seeking Federal office, Ms. Cutler acted without authorization of the DSCC. The DSCC concedes there may be concern about the language of the invitation -- specifically, that the wording "would encourage donors to believe that a 'tally' was an 'earmarking' instruction or to 'earmark' their contributions" -- but that Ms. Cutler acted without authorization. Id. at 4. The DSCC argues that any inaccuracy in the wording of this letter, by someone "admittedly<sup>1</sup> acting without authorization of the DSCC" cannot bind the DSCC or influence its liability. Id. The DSCC maintains that it has made available to its donors a precise explanation of "tally," and it acts promptly to correct any donor misunderstanding of the tally system. Id.

#### D. The Feinstein Campaign

The Feinstein campaign concurs in the response of the DSCC and denies that participation in the tally system violates the Act. The Feinstein campaign acknowledges that Senator Feinstein attended the DSCC Women's Council dinner and that both Senator Feinstein and the Feinstein campaign were aware that

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1. Although the DSCC contends that Ms. Cutler has acknowledged that her representations were not authorized by the DSCC, it has offered nothing in support of this contention.

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contributions to the DSCC would be tallied to her DSCC account. "[W]hile Senator Feinstein aided the DSCC in raising funds to make 2 U.S.C. § 441a(d) expenditures," the Feinstein campaign contends it "did not solicit or receive any earmarked contributions from this event." Feinstein Response at 2. The Feinstein campaign posits that the tallied contributions are in no way earmarked and that the tally system constitutes a perfectly legal accounting method.

In regards to the Section 441d allegation, the Feinstein campaign asserts that it did not write, review, or authorize the invitation for the dinner. Because the dinner was a "DSCC event," id., and the campaign had no involvement with the organization or solicitation for the event, the Feinstein campaign concludes that it could not have violated the Act in this manner.

### III. DISCUSSION

The available evidence supports the conclusion that the request for "tallied" contributions was, in fact, a solicitation for earmarked contributions. Correspondingly, it also supports a reason to believe finding that contributors who responded to the invitation intended that their tallied contributions be earmarked for the Feinstein campaign. Therefore, the contributions should have been treated as earmarked, viz. forwarded to the recipient candidate committees within 10 days, reported as earmarked by the conduit and the recipient, and applied to each contributor's limit to the Feinstein campaign.<sup>2</sup>

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2. See 2 U.S.C. § 441a(a)(8); and 11 C.F.R. §§ 110.6(b)(2)(iii), 102.8, and 110.6(c)(2).



As the DSCC acknowledges, the invitation to the DSCC Women's Council dinner can be fairly read to state that tallied contributions to the DSCC will be designated for the Feinstein campaign. First, the invitation states that by joining the DSCC Women's Council, a donor can "tally" her membership fee of \$1,500 to the Feinstein campaign. Even more telling is the statement in the invitation explaining what it means to "tally your membership": "This means that those dollars will go to her effort." The invitation further states that:

The membership fee in the Women's Council is \$1500. I know that if you are not accustomed to political contributing, that it seems like a great deal of money. It is a great deal of money. But when you consider that Dianne must raise at least \$15 million dollars in order to be competitive with Huffington, this becomes an important investment.

It appears that a contributor would reasonably interpret this invitation to mean that if she wishes to contribute to the Feinstein campaign, the donor need only join the DSCC Women's Council and tally the \$1,500 membership fee to Senator Feinstein's campaign. Correspondingly, it further appears that contributors who responded to this invitation and tallied their DSCC Women's Council membership to Senator Feinstein intended to make and made earmarked contributions.

None of the arguments presented by the DSCC or the Feinstein campaign overcome this conclusion. First, the DSCC's letter to contributors purportedly refusing earmarked donations does not refute the finding that the contributors intended that their tallied contributions be earmarked, nor does it properly "correct"

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such an intention. To begin with, this letter puts the onus on the contributor by requiring that the contributor take the affirmative step of contacting the DSCC if he or she has "a different expectation" about the uses of the contribution. It can be expected that many contributors would simply not bother to exert the effort to obtain a refund. Moreover, this letter is less than clear; it recognizes the previous designation to Dianne Feinstein and, to the extent it contradicts the Women's Council's solicitation, it does so only if the reader understands the DSCC's proposed distinction between "earmarking" and "designation." Despite the DSCC's proffer that its policy is to refuse earmarked contributions, at this stage of the proceedings, it still appears that sending a contribution that is "tallied" for a specific candidate to the DSCC constitutes earmarking.

Next, the DSCC's arguments distinguishing this matter from the apparently "ascertainable standards" applied in MUR 2632 and pre-MUR 261 are unpersuasive. As noted by the DSCC, the Commission in pre-MUR 261 did not explain its rationale in declining to open a MUR. Because the Commission did not articulate its reasons for not adopting the recommendations of the Office of General Counsel, the case has no precedential value. Assuming, for the sake of argument, that pre-MUR 261 speaks to this case -- as the DSCC contends -- it does not support dismissal of this matter. In that case, excess campaign funds were transferred to the state party with the expressed "hope" that they would be used for the Bush/Quayle re-election campaign. In contrast to "hope," the DSCC Women's Council's dinner invitation

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clearly states that the \$1,500 membership fee to join the Women's Council can be tallied to Senator Feinstein, which "means that those dollars will go to her effort." A contributor who tallied money in response to this invitation would reasonably expect that the contribution would literally "go to" the Feinstein campaign.

The DSCC attempts to distinguish the "earmarking elements" present in pre-MUR 261 by arguing that, unlike here, the statement of "hope" made was the donor's. Under the facts of this case, however, that is a distinction without significance because in contrast to an expression of hope -- and far more compelling than a "hope" -- is a contribution made in response to the promise that "those dollars will go to" Senator Feinstein's campaign.

This matter is much more similar to the other case cited by the DSCC, MUR 2632, in which the contribution was given to help the election of a particular candidate.<sup>3</sup> The DSCC attempts to distinguish that case by arguing that "unlike this case, a condition of 'earmarking' -- that the designation 'results in' the contribution being spent in full to benefit the designated candidate -- appears to have been satisfied." Id. at 5. This is simply a misstatement of the law. A contribution is still earmarked even if the contributor's designation results in only part of the contribution being passed through. 11 C.F.R.

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3. Of note, the DSCC failed to include another case decided after MUR 377 which involved earmarking. See MUR 752 (1978) (contributions found to be earmarked when the date and amount of a contribution by a non-profit corporation whose avowed purpose was to raise funds for a particular Senate candidate coincided almost exactly with the date and amount of the coordinated party expenditures made by the State committee on behalf of that candidate).

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§ 110.6(b)(1) (defining "earmarked" as a designation or encumbrance, whether express or implied, which results in "all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee") (emphasis added).

Finally, the DSCC contends that Ms. Cutler was "not authorized by the DSCC" to send this invitation. The DSCC, however, does not deny that it collected membership fees and contributions in response to this invitation. Instead, it contends that tallied contributions are not earmarked.

Further, the DSCC provides no support for its contention that Ms. Cutler was "admittedly acting without authorization of the DSCC" in issuing the DSCC Women's Council's invitation. In fact, to the contrary, the invitation itself indicates that Senator Barbara Boxer, Co-Chair of the DSCC Women's Council, was "cc'd" on the letter. In addition, the Feinstein campaign's response describes the dinner as a "DSCC event" that the Senator attended in order to aid the DSCC in raising funds.

In summary, it appears that contributors who made tallied contributions in response to the solicitation to join the DSCC Women's Council could reasonably intend and expect that their contributions tallied to Senator Feinstein would be used to support the Feinstein campaign. Therefore, it appears that donors who made a contribution to the DSCC designated for the Feinstein campaign's "tally account" intended at least an "implied encumbrance" within the meaning of the earmarking regulation, 11 C.F.R. § 110.6(b)(1). Correspondingly, it appears that the

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DSCC was the intended intermediary or conduit of the earmarked contributions within the meaning of 11 C.F.R. § 110.6(b)(2).

It appears that contributors who responded to this invitation and made "tallied" contributions to the DSCC on behalf of the Feinstein campaign made earmarked contributions. Assuming that the DSCC "passed through" tallied contributions to the candidate in the form of coordinated party expenditures, as alleged, there is reason to believe that the Feinstein campaign failed to report the earmarked contributions and that the DSCC acted as a conduit for earmarked contributions, as required by 11 C.F.R. § 110.6(c)(2). Moreover, to the extent such contributions came from: (1) a donor whose "tallied" contribution(s) exceeded the statutory maximum for an individual's contributions to a candidate; or (2) a donor who had already made the maximum contribution to the Feinstein campaign, it appears that the Feinstein campaign accepted excessive contributions in violation of 2 U.S.C. § 441a(f). Therefore, for all of these reasons, there is reason to believe that the Feinstein for Senate '94 and Michael J. Barrett, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2).

In regard to the alleged Section 441b violation, it is uncontested that Lynn Cutler, a lobbyist and senior vice president of TKG, used TKG's corporate stationery in the June 27, 1994, invitation for the dinner benefiting the Feinstein campaign. Although the corporation was apparently unaware of Ms. Cutler's use of the stationery, Ms. Cutler's position as senior vice president allowed her to "consent" to the use of

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corporate stationery. After the complaint was filed in this matter, Ms. Cutler reimbursed TKG for the use of the stationery. The use of the TKG corporate stationery constitutes an in-kind corporate contribution which was received by the DSCC for the benefit of the Feinstein campaign. Therefore, there is reason to believe that Feinstein for Senate '94 and Michael J. Barrett, as treasurer, violated 2 U.S.C. § 441b.

Turning to the Section 441d allegation, it seems apparent that the dinner invitation expressly advocated the election of Senator Feinstein and the defeat of her opponent and solicited contributions on behalf of Senator Feinstein; it was not, however, required to have a disclaimer under 2 U.S.C. § 441d. Pursuant to that section, disclaimers are only required for communications disseminated through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising. The invitation in this matter was for a dinner at the home of Ms. Cutler where "a small group of women" would meet with Senator Feinstein. Complainant does not allege that the invitation was broadly distributed nor is there any evidence to indicate that its distribution was other than limited -- in keeping with a dinner party at one's home. There is no indication that this dinner invitation was distributed through any form of general public political advertising. Accordingly, there is no reason to believe that Feinstein for Senate '94 and Michael J. Barrett, as treasurer, violated 2 U.S.C. § 441d.

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MERGER OF MURS

After finding reason to believe that violations occurred in MUR 4010, the Commission voted to merge MUR 4010 into MUR 3620 and to hereafter refer to the entire matter as MUR 3620.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Jeffrey M. Sandman  
Senior Vice President and General Counsel  
The Kamber Group Incorporated  
1920 L Street, N.W.  
Suite 700  
Washington, D.C. 20036

March 17, 1995

RE: MUR 3620  
Lynn Cutler

Dear Mr. Sandman:

On July 21, 1994, the Federal Election Commission notified Lynn Cutler, Senior Vice President of The Kamber Group Incorporated, 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 her at that time.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on March 7, 1995, found that there is reason to believe Lynn Cutler violated 2 U.S.C. § 441b, a provision of the Act. On that same date, the Commission also found that there is no reason to believe Lynn Cutler violated 2 U.S.C. § 441d. In addition, the Commission determined to merge MUR 4010 into MUR 3620, and hereafter refer to this matter as MUR 3620. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

In furtherance of its investigation, the Commission requests that Ms. Cutler submit answers in writing and under oath to the questions set forth below within 30 days of your receipt of this request. In addition, the Commission requests that she produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline. Clear and legible copies or duplicates of the documents may be submitted in lieu of the production of the originals.

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Jeffrey M. Sandman

Please have Ms. Cutler answer the following questions and produce the documents requested below:

1. Please provide a detailed list with an estimate of the fair market value of each and every corporate resource of The Kamber Group Incorporated's ("TKG") used by you or on your behalf, including, but not limited to, the use of employees' time, stationery, telephones, envelopes, computers and postage in connection with:
  - a. the preparation and mailing of the June 27, 1994, invitation; and
  - b. hosting the fundraiser dinner held at your home on July 18, 1994.
2. In regard to the July 18, 1994, fundraiser, please state:
  - a. The number of persons invited.
  - b. The number of persons who attended.
  - c. Of those who attended, state how many contributors tallied their memberships and/or contributions to the DSCC for the Feinstein campaign and the total amount of money that was tallied.
  - d. Of those that did not attend the event, state how many contributors tallied their memberships and/or contributions to the DSCC for the Feinstein campaign in response to your invitation and state the total amount of money that was tallied.

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3. Concerning the list of persons invited to the July 18, 1994 fundraiser at your home:
- a. How did you determine who you invited to the fundraiser?
  - b. Please identify all sources for the list of persons invited to the fundraiser.
  - c. Were any of the persons invited taken from a TKG corporate mailing list of any sort?
  - d. Did the DSCC supply the names and addresses of anyone invited?
  - e. Did the Feinstein campaign supply the names and addresses of anyone invited?
4. TKG's response to the complaint included a declaration from you which states "[I] was billed for the cost of the mailing, and [I] paid TKG in full for that amount." Concerning this billing and reimbursement, please answer the following:
- a. Identify the specific total amount that TKG billed you and explain how the figure was arrived at, i.e., provide an itemized list of the charges for services and/or supplies for which you were billed.
  - b. State the date on which you were billed.
  - c. Provide copies of all documents relating to this billing.
  - d. State the amount that you reimbursed TKG and the date that you paid TKG.
  - e. How did you reimburse TKG?
  - f. Provide copies of all documents relating to this reimbursement to TKG.

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Jeffrey M. Sandman


You may also submit any additional 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 30 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, 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 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 Mary Ann Bumgarner or Stephan Kline, the attorneys assigned to this matter, at (202) 219-3690.

Sincerely,

  
Danny L. McDonald  
Chairman

Enclosure  
Factual & Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** The Kamber Group, Incorporated  
Lynn Cutler

**MUR:** 3620

**I. GENERATION OF MATTER**

This case arises from a complaint filed by the National Republican Senatorial Committee ("NRSC" or "Complainant") with the Federal Election Commission ("Commission") against The Kamber Group, Incorporated ("TKG"). The NRSC alleges that TKG violated 2 U.S.C. § 441b of the Federal Election Campaign Act of 1971, as amended, (the "Act") by making corporate contributions to Feinstein for Senate '94 ("Feinstein campaign"). Complaint at 2. Complainant also alleges that TKG violated 2 U.S.C. § 441d by failing to place the required disclaimer on a fundraising letter. Id.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. The Act**

Pursuant to 2 U.S.C. § 441b(a), a corporation is prohibited from making a contribution or expenditure in connection with a federal election. The Act also prohibits officers or directors of a corporation from consenting to any contribution or expenditure by the corporation. 2 U.S.C. § 441b(a). The Act reflects the fact that a corporation can only act through its officers, directors and other agents and that these actions can be imputed to the corporation itself. A political committee is prohibited

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from knowingly accepting any contribution prohibited by 2 U.S.C. § 441b. See also, 11 C.F.R. § 114.2.

The term "contribution" is defined at 2 U.S.C. § 431(8)(A) to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. The term "expenditure" is defined at 2 U.S.C. § 431(9)(A) and 11 C.F.R. § 100.8(a)(1) to include any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for federal office. In this context the term "anything of value" includes all in-kind contributions. 11 C.F.R. § 100.8(a)(1)(iv)(A).

In addition, under 2 U.S.C. § 441d(a), whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, the communication shall state who paid for and authorized it.

**B. The Complaint**

Complainant alleges that the Feinstein campaign conducted a \$1,500 per person fundraising dinner at the residence of Lynn Cutler. In support, Complainant provided a copy of an invitation, dated June 27, 1994, which was on TKG stationery. The invitation was signed by Ms. Cutler. In pertinent part, the invitation

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states: "I am asking that you join the Women's Council of the Democratic Senate Campaign Committee as the price of dinner. You can 'tally' your membership to Senator Feinstein's campaign. This means that those dollars will go to her effort." By using "corporate resources, including but not necessarily limited to corporate stationery," in connection with the June 27, 1994 invitation, the NRSC alleges violations of 2 U.S.C. § 441b. Complaint at 2. The NRSC also alleges that TKG "violated Section 441d of the Act by failing to place the required notice which informs the public who paid for the fundraising letter . . . and the fact that they [sic] were authorized by candidate Feinstein." Id.

C. TKG Response

In its response, TKG attached an affidavit from Ms. Cutler acknowledging that "I now realize I used The Kamber Group's ("TKG") corporate stationery incorrectly, but did not intend that this use should be construed as a corporate expenditure; I simply made a mistake." TKG Response. She further avers that she "did not consult with TKG management about use of corporate letterhead for such purposes." Id. Correspondingly, the president and CEO of TKG, Victor Kamber, submitted an affidavit declaring that "neither [he] nor management of this company had knowledge of the invitation sent by Ms. Cutler, or the use of TKG stationery for the invitation. Ms. Cutler did not consult with me or the corporation's management or counsel about the use of corporate stationery for this purpose. Had she inquired she would have been informed that it was impermissible." Id. According to

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Ms. Cutler's affidavit and Mr. Kamber's affidavit, as soon as Ms. Cutler learned that a complaint had been filed, she notified her company about her use of the stationery, was billed for that use, and subsequently reimbursed TKG. TKG states that Lynn Cutler made "an entirely inadvertent and innocent mistake" in printing the June 27, 1994 dinner invitation on TKG letterhead. Id.

### III. DISCUSSION

It is uncontested that Lynn Cutler, a lobbyist and senior vice president of TKG, used its corporate stationery in the June 27, 1994 invitation for the dinner benefiting the Feinstein campaign. The responses from TKG and Ms. Cutler tacitly admit that there was a violation of the Act. Although TKG and Ms. Cutler state that the corporation was unaware of Ms. Cutler's use of the stationery, Ms. Cutler's position as senior vice president allowed her to "consent" to the use of corporate stationery. She reimbursed the corporation for the cost of the stationery only after the complaint was filed in this matter. Because the use of this stationery constitutes a corporate in-kind contribution, there is reason to believe that The Kamber Group, Incorporated and Lynn Cutler violated 2 U.S.C. § 441b.

Turning to the Section 441d allegation, it seems apparent that the dinner invitation expressly advocated the election of Senator Feinstein and the defeat of her opponent and solicited contributions on behalf of Senator Feinstein; it was not, however, required to have a disclaimer under 2 U.S.C. § 441d. Pursuant to that section, disclaimers are only required for communications

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disseminated through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising. The invitation in this matter was for a dinner at the home of Ms. Cutler where "a small group of women" would meet with Senator Feinstein. Complainant does not allege that the invitation was broadly distributed nor is there any evidence to indicate that its distribution was other than limited -- in keeping with a dinner party at one's home. There is no indication that this dinner invitation was distributed through any form of general public political advertising. Accordingly, there is no reason to believe that The Kamber Group, Incorporated or Lynn Cutler violated 2 U.S.C. § 441d.

MERGER OF MURS

After finding reason to believe that violations occurred in MUR 4010, the Commission voted to merge MUR 4010 into MUR 3620 and to hereafter refer to the entire matter as MUR 3620.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

March 17, 1995

Lyn Utrecht, Esq.  
Oldaker, Ryan & Leonard  
818 Connecticut Avenue, N.W.  
Suite 1100  
Washington, D.C. 20006

RE: MUR 4010  
Senator Dianne Feinstein

Dear Ms. Utrecht:

On July 21, 1994, the Federal Election Commission notified Senator Dianne Feinstein of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On March 7, 1995, the Commission found, based upon the allegations of the complaint and information provided by you, that there is no reason to believe Senator Feinstein violated any provision of the Act in MUR 4010. Accordingly, the Commission closed its file in MUR 4010 as it pertains to Senator Feinstein.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all other respondents involved. 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.

Sincerely,

Lawrence M. Noble  
General Counsel

BY: Lois G. Lerner  
Associate General Counsel

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FEDERAL ELECTION COMMISSION  
WASHINGTON D.C. 20463

March 17, 1995

Jeffrey M. Sandman  
Senior Vice President and General Counsel  
The Kamber Group Incorporated  
1920 L Street, N.W.  
Suite 700  
Washington, D.C. 20036

RE: MUR 3620  
The Kamber Group Incorporated

Dear Mr. Sandman:

On July 21, 1994, the Federal Election Commission notified The Kamber Group Incorporated 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 the company at that time.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on March 7, 1995, found that there is reason to believe The Kamber Group Incorporated violated 2 U.S.C. § 441b, a provision of the Act. On that same date, the Commission also found that there is no reason to believe The Kamber Group Incorporated violated 2 U.S.C. § 441d. In addition, the Commission determined to merge MUR 4010 into MUR 3620, and hereafter refer to this matter as MUR 3620. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

In furtherance of its investigation, the Commission requests that The Kamber Group Incorporated submit answers in writing and under oath to the questions set forth below within 30 days of your receipt of this request. In addition, the Commission requests that the company produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline. Clear and legible copies or duplicates of the documents may be submitted in lieu of the production of the originals.

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Page 2  
Jeffrey M. Sandman

Please answer the following questions and produce the documents requested below:

1. Please provide a detailed list with an estimate of the fair market value of each and every corporate resource of The Kamber Group Incorporated's ("TKG") used by Lynn Cutler or on her behalf, including, but not limited to, the use of employees' time, stationery, telephones, envelopes, computers and postage in connection with:
  - a. the preparation and mailing of the June 27, 1994, invitation; and
  - b. hosting the fundraiser dinner held at the home of Ms. Cutler on July 18, 1994.
2. TKG's response to the complaint states that TKG "billed Ms. Cutler for the cost of the letterhead and she promptly paid such to TKG." Concerning this reimbursement, please answer the following:
  - a. Identify the specific total amount that TKG billed Ms. Cutler and explain how the figure was arrived at, i.e., provide an itemized list of the charges for services and/or supplies for which she was billed.
  - b. State the date on which Ms. Cutler was billed.
  - c. Provide copies of all documents relating to the billing of Ms. Cutler.
  - d. State the amount that Ms. Cutler reimbursed TKG and the date that TKG received payment.
  - e. How was TKG reimbursed by Ms. Cutler?
  - f. Provide copies of all documents relating to Ms. Cutler's reimbursement to TKG.
3. Did any other employees of TKG attend the fundraising dinner held on June 18, 1994? If so, please identify the employee(s) and his or her position at TKG.

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Page 3  
Jeffrey M. Sandman

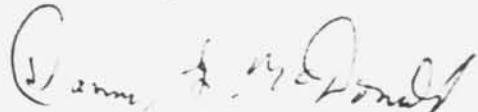
You may also submit any additional factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 30 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, 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 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 Mary Ann Bumgarner or Stephan Kline, the attorneys assigned to this matter, at (202) 219-3690.

Sincerely,



Danny L. McDonald  
Chairman

Enclosure  
Factual & Legal Analysis

95043690634

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: The Kamber Group, Incorporated  
Lynn Cutler

MUR: 3620

**I. GENERATION OF MATTER**

This case arises from a complaint filed by the National Republican Senatorial Committee ("NRSC" or "Complainant") with the Federal Election Commission ("Commission") against The Kamber Group, Incorporated ("TKG"). The NRSC alleges that TKG violated 2 U.S.C. § 441b of the Federal Election Campaign Act of 1971, as amended, (the "Act") by making corporate contributions to Feinstein for Senate '94 ("Feinstein campaign"). Complaint at 2. Complainant also alleges that TKG violated 2 U.S.C. § 441d by failing to place the required disclaimer on a fundraising letter. Id.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. The Act**

Pursuant to 2 U.S.C. § 441b(a), a corporation is prohibited from making a contribution or expenditure in connection with a federal election. The Act also prohibits officers or directors of a corporation from consenting to any contribution or expenditure by the corporation. 2 U.S.C. § 441b(a). The Act reflects the fact that a corporation can only act through its officers, directors and other agents and that these actions can be imputed to the corporation itself. A political committee is prohibited

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from knowingly accepting any contribution prohibited by 2 U.S.C. § 441b. See also, 11 C.F.R. § 114.2.

The term "contribution" is defined at 2 U.S.C. § 431(8)(A) to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. The term "expenditure" is defined at 2 U.S.C. § 431(9)(A) and 11 C.F.R. § 100.8(a)(1) to include any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for federal office. In this context the term "anything of value" includes all in-kind contributions. 11 C.F.R. § 100.8(a)(1)(iv)(A).

In addition, under 2 U.S.C. § 441d(a), whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, the communication shall state who paid for and authorized it.

#### B. The Complaint

Complainant alleges that the Feinstein campaign conducted a \$1,500 per person fundraising dinner at the residence of Lynn Cutler. In support, Complainant provided a copy of an invitation, dated June 27, 1994, which was on TKG stationery. The invitation was signed by Ms. Cutler. In pertinent part, the invitation

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states: "I am asking that you join the Women's Council of the Democratic Senate Campaign Committee as the price of dinner. You can 'tally' your membership to Senator Feinstein's campaign. This means that those dollars will go to her effort." By using "corporate resources, including but not necessarily limited to corporate stationery," in connection with the June 27, 1994 invitation, the NRSC alleges violations of 2 U.S.C. § 441b. Complaint at 2. The NRSC also alleges that TKG "violated Section 441d of the Act by failing to place the required notice which informs the public who paid for the fundraising letter . . . and the fact that they [sic] were authorized by candidate Feinstein." Id.

C. TKG Response

In its response, TKG attached an affidavit from Ms. Cutler acknowledging that "I now realize I used The Kamber Group's ("TKG") corporate stationery incorrectly, but did not intend that this use should be construed as a corporate expenditure; I simply made a mistake." TKG Response. She further avers that she "did not consult with TKG management about use of corporate letterhead for such purposes." Id. Correspondingly, the president and CEO of TKG, Victor Kamber, submitted an affidavit declaring that "neither [he] nor management of this company had knowledge of the invitation sent by Ms. Cutler, or the use of TKG stationery for the invitation. Ms. Cutler did not consult with me or the corporation's management or counsel about the use of corporate stationery for this purpose. Had she inquired she would have been informed that it was impermissible." Id. According to

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Ms. Cutler's affidavit and Mr. Kamber's affidavit, as soon as Ms. Cutler learned that a complaint had been filed, she notified her company about her use of the stationery, was billed for that use, and subsequently reimbursed TKG. TKG states that Lynn Cutler made "an entirely inadvertent and innocent mistake" in printing the June 27, 1994 dinner invitation on TKG letterhead. Id.

### III. DISCUSSION

It is uncontested that Lynn Cutler, a lobbyist and senior vice president of TKG, used its corporate stationery in the June 27, 1994 invitation for the dinner benefiting the Feinstein campaign. The responses from TKG and Ms. Cutler tacitly admit that there was a violation of the Act. Although TKG and Ms. Cutler state that the corporation was unaware of Ms. Cutler's use of the stationery, Ms. Cutler's position as senior vice president allowed her to "consent" to the use of corporate stationery. She reimbursed the corporation for the cost of the stationery only after the complaint was filed in this matter. Because the use of this stationery constitutes a corporate in-kind contribution, there is reason to believe that The Kamber Group, Incorporated and Lynn Cutler violated 2 U.S.C. § 441b.

Turning to the Section 441d allegation, it seems apparent that the dinner invitation expressly advocated the election of Senator Feinstein and the defeat of her opponent and solicited contributions on behalf of Senator Feinstein; it was not, however, required to have a disclaimer under 2 U.S.C. § 441d. Pursuant to that section, disclaimers are only required for communications

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disseminated through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising. The invitation in this matter was for a dinner at the home of Ms. Cutler where "a small group of women" would meet with Senator Feinstein. Complainant does not allege that the invitation was broadly distributed nor is there any evidence to indicate that its distribution was other than limited -- in keeping with a dinner party at one's home. There is no indication that this dinner invitation was distributed through any form of general public political advertising. Accordingly, there is no reason to believe that The Kamber Group, Incorporated or Lynn Cutler violated 2 U.S.C. § 441d.

MERGER OF MURS

After finding reason to believe that violations occurred in MUR 4010, the Commission voted to merge MUR 4010 into MUR 3620 and to hereafter refer to the entire matter as MUR 3620.

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OLDAKER, RYAN & LEONARD

ATTORNEYS AT LAW

818 CONNECTICUT AVENUE, N.W.

SUITE 1100

WASHINGTON, D.C. 20006

(202) 728-1010

FACSIMILE (202) 728-4044

March 21, 1995

MAR 23 3 26 PM '95

FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL COUNSEL

Mary Ann Bumgarner, Esq.  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

RE: MUR 3620, Feinstein for Senate '94  
and Michael J. Barrett, as Treasurer

Dear Ms. Bumgarner:

This is a request for an extension of time to respond to the Commission's finding that there is reason to believe my client violated certain provisions of the Federal Election Campaign Act in the above-referenced matter.

The Feinstein for Senate Committee received your letter on March 20, 1995, making a response due on April 4, 1995. Due to travel plans and other deadlines facing counsel, we are requesting a 20-day extension in order to adequately respond to this matter. This extension would make our response due by the close of business on April 24, 1995.

We would greatly appreciate your assistance in this matter.

Sincerely,



Lyn Utrecht

01906931056



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 23, 1995

Lyn Utrecht, Esquire  
Oldaker, Ryan & Leonard  
818 Connecticut Avenue, N.W.  
Suite 1100  
Washington, D.C. 20006

RE: MUR 3620  
Feinstein for Senate '94  
and Michael J. Barrett,  
as treasurer

Dear Ms. Utrecht:

This is in response to your letter dated March 21, 1995, which we received on March 22, 1995, requesting an extension of 20 days to respond to the Commission's reason to believe findings. 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 April 24, 1995.

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

Sincerely,

A handwritten signature in cursive script that reads "Mary Ann Bumgarner".

Mary Ann Bumgarner  
Attorney

95043690641

# PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
607 FOURTEENTH STREET, N.W. WASHINGTON, D.C. 20005-2011  
TELEPHONE: (202) 628-6600 FACSIMILE: (202) 434-1690

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

MAR 30 2 42 PM '95

March 30, 1995

## Via Hand Delivery

Mary Ann Bumgarner, Esquire  
Office of the General Counsel  
Federal Election Commission  
Sixth Floor  
999 E Street, N.W.  
Washington, D.C. 20463

(MUR 3620)

### **Re: Production of Tally Contributor List**

Dear Ms. Bumgarner:

Pursuant to our meeting yesterday, enclosed is the Democratic Senatorial Campaign Committee's tally contributor list for the 1992 election cycle.

We understand that your office will decide in the coming days whether to enter into negotiation towards settlement as DSCC has requested, while suspending for the duration of that negotiation the current investigation that has included interviews of DSCC contributors. For our part, we are prepared to proceed in good faith toward a prompt and mutually satisfactory settlement. Furthermore, we wish to reiterate our position that if you ultimately decide not to pursue negotiation and instead to continue the investigation, we reserve our right, without prejudice, to seek judicial relief in line with the arguments advanced in our February 16, 1995, Motion to the Commission.

In the meantime, we are in the process of making arrangements to produce all other documents from the 1992 cycle responsive to the subpoena, in accordance with our discussions yesterday. We will deliver those documents to you on April 12, 1995, by 5:00 p.m. We have established this date on the basis of a realistic assessment of

Mary Ann Bumgarner, Esquire  
March 30, 1995  
Page 2

the time and resources required for a complete production, including the addition of personnel needed to bring this task to a conclusion in a timely manner.

If you have any questions, please do not hesitate to contact either one of us.

Very truly yours,

*Robert F. Bauer / Skg*

Robert F. Bauer  
Marc E. Elias

MEE:dkg  
Enclosure

95043690643



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

VIA FACSIMILE

April 7, 1995

Mr. Robert F. Bauer, Esquire  
Perkins Coie  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2011

RE: MUR 3620  
Democratic Senatorial  
Campaign Committee  
and Donald J. Foley, as  
treasurer

Dear Mr. Bauer:

This is to confirm that you will be submitting all outstanding documents responsive to the Subpoena and Order dated October 17, 1994, by the close of business on April 12, 1995. In addition, as we agreed yesterday, you will advise this Office on Monday, April 10th, of the status of the other Respondents concerning preprobable cause conciliation of this matter.

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

Sincerely,

Mary Ann Bumgarner  
Attorney

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RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

APR 18 9 59 AM '95

April 11, 1995

THE  
KAMBER  
GROUP

Corporate

Headquarters

1920 L Street, NW

Suite 700

Washington, DC

20036

(202) 223-8700

FAX (202) 659-5559

30 East 29th Street

Suite 200

New York, NY

10016

(212) 679-4540

FAX (212) 684-0074

Danny L. McDonald, Chairman  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

RE: MUR 3620

APR 18 10 17 AM '95

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF SECRETARY

Dear Mr. McDonald:

On behalf of The Kamber Group, Incorporated and Lynn Cutler, I hereby respectfully request an extension of time until May 30, 1995 in which to respond to the above-referenced matter. The reason for this request is that there was a serious fire in our premises and as a result we have had to temporarily relocate our executive offices since last November. Because of the fire we have been unable to locate all of the files relevant to enable us to answer the Commission's questions. We are planning on moving back at the beginning of May and therefore are making this request.

Further, after reviewing those records we may request pursuing pre-probable cause conciliation.

Thank you for your consideration.

Sincerely yours,



Jeffrey M. Sandman  
Executive Vice President and General Counsel

JMS:lj

cc: Victor Kamber  
Lynn Cutler





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

April 20, 1995

Jeffrey M. Sandman, Esquire  
Executive Vice President and General Counsel  
The Kamber Group Incorporated  
1920 L Street, N.W.  
Suite 700  
Washington, D.C. 20036

Re: MUR 3620  
The Kamber Group Incorporated  
Lynn Cutler

Dear Mr. Sandman:

This is in response to your letter dated April 11, 1995, which we received on April 18, 1995, requesting an extension of time until May 30, 1995, to respond to the Commission's questions in MUR 3620. After considering the circumstances presented in your letter, the Office of General Counsel has granted you an additional 20 days to respond. Accordingly, your response is due by the close of business on May 12, 1995.

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

Sincerely,

Stephan O. Kline  
Attorney

95043690646

# PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
607 FOURTEENTH STREET, N.W. WASHINGTON, D.C. 20005-2011  
TELEPHONE: (202) 628-6600 FACSIMILE: (202) 434-1690

April 17, 1995

Via Facsimile (202) 219-3923

MUR 3620

Mary Ann Bumgarner, Esquire  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W., Sixth Floor  
Washington, D.C. 20463

**Re: Request for Pre-Probable Cause Conciliation**

Dear Ms. Bumgarner:

As we indicated in our letter to you dated March 30, 1995, we are prepared to enter into, and through this letter renew our request for, pre-probable cause conciliation.

In this regard, we have contacted counsel for the Feinstein, Abrams, and Sanford campaigns, and they have each indicated a willingness to participate in the conciliation process at this time. The "tally program" is organized and operated by the DSCC for the benefit, and with the participation, of its Senatorial candidates. Thus, while counsel for the individual campaigns may wish to actively participate at various stages of the negotiation process, they have indicated a desire and willingness to have the DSCC's counsel act as lead counsel and negotiator in the pre-probable cause conciliation process.

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FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

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Mary Ann Bumgarner, Esquire  
April 17, 1995  
Page 2

As we have stated previously, we are prepared to proceed in good faith toward a prompt and mutually satisfactory settlement. Once again, we reserve the right, without prejudice, to seek judicial relief in line with the arguments advanced in our February 16, 1995, Motion to the Commission if we are unable to reach a satisfactory agreement.

If you have any questions, please do not hesitate to contact either one of us.

Very truly yours,



Robert F. Bauer  
Marc E. Elias

MEE:dkg

JOHN R. WALLACE\*  
PAUL P. GREECH  
PETER J. SARDA  
ROBERT E. ZAYTOUN\*  
RICHARD P. NORDAN  
RICHARD T. FOUNTAIN, III  
PATRICIA L. WILSON MEDYNSKI

\*ALSO ADMITTED IN FLORIDA

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UCB PLAZA  
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RALEIGH, NORTH CAROLINA 27612

MAILING:  
P.O. BOX 12065  
RALEIGH, N.C. 27605  
(919) 782-9322

**FAX**

(919) 782-8113

**VIA FACSIMILE**  
**ORIGINAL BY U.S. MAIL**

Mary Ann Bumgarner, Esq.  
Federal Election Commission  
Office of the General Counsel  
999 E. Street N.W.  
Washington, DC 20463

Re: MUR 3620  
Terry Sanford for Senate Committee and Alton G.  
Buck as treasurer. Respondents

Dear Ms. Bumgarner:

Thank you for your call today regarding the foregoing  
Matter Under Review.

You have advised me that the Commission has in this MUR approved a suspension of the investigation in favor of an early effort at pre-probable cause conciliation. This pre-probable cause conciliation will be conducted between the Office of the General Counsel and Robert Bauer, Esq. of Perkins Coie, counsel to the Respondent Democratic Senatorial Campaign Committee. It is my understanding that the Commission by this early negotiation is seeking a global conciliation agreement involving not only DSCC, but also each of the three candidate committees, the Feinstein Committee, the Abrams Committee and the Sanford Committee.

As I indicated to Mr. Bauer last week and to you by telephone today, it is the view of the Sanford Committee that there has been no wrongdoing on the part of the Committee, and that this matter should be speedily resolved. It is also the view of the Sanford Committee that facts and circumstances arising between the Sanford Committee and DSCC may vary facts in circumstances arising as between the DSCC and other candidate committees.

Mon 21 17:00  
Wed 23 12:22 PM '96

Mary Ann Bumgarner, Esq.  
April 19, 1995  
Page 2

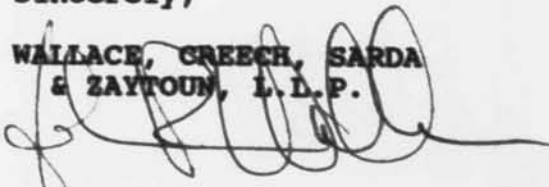
The foregoing notwithstanding, it is the request of the Sanford Committee that the Office of General Counsel undertake early pre-probable cause conciliation with a view towards resolving these matters.

Thank you for your courtesy in this regard.

With best wishes, I remain,

Sincerely,

WALLACE, CREECH, SARDA  
& ZAYTOUN, L.L.P.

A handwritten signature in dark ink, appearing to be 'John R. Wallace', written over the typed name.

John R. Wallace

JRW/smr  
LSJW9219.006

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FEDERAL ELECTION  
COMMISSION  
PUBLIC DISCLOSURE  
DIVISION  
APR 24 2 26 PM '95

OLDAKER, RYAN & LEONARD  
ATTORNEYS AT LAW  
818 CONNECTICUT AVENUE, SUITE 1100  
WASHINGTON, D.C. 20006

(202) 728-1010  
FACSIMILE (202) 728-4044

April 24, 1995

Lawrence M Noble, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

RE: MUR 3620  
Feinstein for Senate '94 and  
Michael J. Barrett, as treasurer

Dear Mr. Noble:

This letter is in response to the Commission's finding on March 7, 1995, that there is reason to believe that my clients, Feinstein for Senate '94 and Michael J. Barrett, as Treasurer (the "Respondents"), violated 2 U.S.C. §§441a(f) and 441b, provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"), and 11 C.F.R. §110.6(c)(2). The Respondents strenuously disagree with the Commission's in this matter for all of the reasons contained herein and those reasons set forth in the attached responses of February 2, 1995 (MUR 3620) and August 29, 1994 (MUR 4010). The Respondents disagree with the Commission's Factual and Legal Analysis ("Staff Analysis") that the contributions from the DSCC Women's Council event (the "event") were earmarked for the Feinstein for Senate '94 (the "Committee").

The Staff Analysis contends that the Committee violated 2 U.S.C. §441a(f) when it accepted individual contributions of \$1,500, the price of the event, and that the Committee violated 11 C.F.R. §110.6(c)(2) when they failed to report such earmarked contributions. However, there is no evidence set forth by the Commission which supports these assertions. The Committee did not accept any excessive contributions as a result of this event. This event was solely implemented by the DSCC and all monies raised at the event went to the DSCC. Senator Feinstein was one of several senators who attended this event for the purpose of aiding the DSCC in raising funds. The Senator was aware that the some of the funds contributed in response to this solicitation would be tallied to her account. As previously explained in our responses to MUR 3620 and MUR



4010, as well as the DSCC's responses to the same MURs, earmarking is not the same as tallying. Tallying is a process which the DSCC uses to track funds raised by a candidate, but given to the DSCC. The DSCC takes into account the amount of tallied funds when deciding to make §441a(d) expenditures on behalf of a candidate. Whether the candidate has aided the DSCC in raising funds is only one of many factors used in making this decision. There is no evidence that contributions to the DSCC through this event were earmarked rather than tallied.

The Staff Analysis at p. 6 relies primarily on the language in the solicitation letter to support these allegations by assuming that those contributors who responded to the letter intended for their contribution to be earmarked for Senator Feinstein. This assumption is unwarranted. All of the contributors who attended the event were aware that contributions would go to the DSCC and would only be tallied to Senator Feinstein's account. See DSCC response to MUR 4010, 8/17/94. In fact, all contributions from this event which were designated for Senator Feinstein were tallied to her account. Therefore, the Committee did not receive any contributions from this event. Moreover, the Committee did not write, review or authorize the solicitation for this event. The Committee had no control or responsibility for the language in the solicitation. For these reasons, the Respondents did not violate §441a(f) of the Act. Correspondingly, since the Committee did not receive earmarked funds, the Respondents had no obligation to report the contributions as being from individuals, and likewise, the Committee did not violate 11 C.F.R. §110.6(c)(2).

The Staff Analysis also asserts that the invitations to this event were mailed on corporate stationery, constituting a prohibited in-kind corporate contribution to the Feinstein campaign. As stated above, the Feinstein Committee was not responsible for the implementation of this event, including solicitation of the attendees, and did not write, review or authorize the solicitations for this event. As a result, the Committee did not receive an in-kind corporate contribution and the Respondents did not violate §441b of the Act.

For all of the foregoing reasons, the allegations set forth in the Staff Analysis are completely without merit and we hope that the Commission will quickly dismiss this action against my clients.

Sincerely,



Lyn Utrecht

## SKADDEN, ARPS, SLATE, MEAGHER &amp; FLOM

1440 NEW YORK AVENUE, N.W.  
WASHINGTON, D.C. 20005-2111

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DIRECT MAIL  
BOX 377 7007

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BUDAPEST  
FRANKFURT  
HONG KONG  
LONDON  
MOSCOW  
PARIS  
PRAGUE  
SYDNEY  
TOKYO  
TORONTO

April 28, 1995

VIA FAX

Mary Ann Bumgarner, Esq.  
Stephan Kline, Esq.  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463


Re: MUR 3620 The Abrams Committee and Lawrence  
B. Buttenweiser, as Treasurer

Dear Ms. Bumgarner &amp; Mr. Kline:

This letter is written on behalf of The Abrams Committee and its treasurer regarding our discussions concerning pre-probable cause conciliation. Pursuant to those discussions, we are willing to enter into pre-probable cause conciliation with the understanding that this request in no way suggests that The Abrams Committee or its treasurer violated any law. We are entering into pre-probable conciliation as a procedural matter, so that we may participate in the conciliation discussions regarding the Democratic Senatorial Campaign Committee's conciliation efforts.

I look forward to a resolution of this matter which is consistent with our position that we did not violate any law and appreciate your efforts in that regard.

Sincerely,

  
Kenneth A. Gross

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
Democratic Senatorial )  
Campaign Committee and )  
Donald J. Foley, as )  
treasurer )  
Abrams Committee, f/k/a )  
Abrams '92 and Lawrence B. )  
Buttenwieser, as treasurer )  
Feinstein for Senate '94 and )  
Michael J. Barrett, as )  
treasurer )  
Sanford for Senate )  
Committee and Alton G. )  
Buck, as treasurer )

MUR 3620

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On October 4, 1994, the Commission found there is reason to believe that contributors who responded to certain candidates' solicitations and made "tallied" contributions to the Democratic Senatorial Campaign Committee ("DSCC") on behalf of those candidates made earmarked contributions. The Commission further found that there is reason to believe that the DSCC either: (1) failed to forward earmarked contributions within the applicable 10-day time limit, as set forth in 11 C.F.R. §§ 102.8 and 110.6(b)(2)(iii), and failed to report the original source and intended recipient to the Commission and to the intended recipient, as required by 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(C)(1); or (2) if the contributions in question were passed through to the candidates in the form of coordinated party expenditures, that the DSCC failed to report the source of the contributions and the intended recipient to the Commission and to

95043690654

the intended recipient, in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c)(1).

Also on October 4, 1994, the Commission found reason to believe that during the 1992 election cycle the Abrams Committee, f/k/a Abrams '92, and Lawrence B. Battenwieser, as treasurer; Feinstein for Senate '94,<sup>1</sup> and Michael J. Barrett, as treasurer; and Sanford for Senate Committee, and Alton G. Buck, as treasurer, (collectively, the "candidate committees") violated 11 C.F.R. § 110.6(c)(2) and 2 U.S.C. § 441a(f) for failing to report the earmarked contributions and that the DSCC acted as a conduit for earmarked contributions and for accepting excessive contributions. On that same day, the Commission approved Subpoenas and Orders to Submit Written Answers and to Produce Documents to all Respondents.

On March 7, 1995, based on a similar complaint concerning the 1994 election cycle, MUR 4010, the Commission found reason to believe that: (1) the DSCC violated 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 102.8, 110.6(b)(2)(iii) and 110.6(c)(1); and (2) Feinstein for Senate '94 and Michael J. Barrett, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2). The

---

1. Feinstein for Senate '94 is the most recent campaign committee of Senator Dianne Feinstein and is the successor political committee of Feinstein for Senate Committee.

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Commission also voted to merge MUR 4010 into MUR 3620. On that same day, the Commission also denied the DSCC's Motions to Quash the Subpoena and Order and to Suspend Interviews of Contributors arising out of the on-going investigation in MUR 3620.

After receiving notification of the Commission's denial of these motions and the reason to believe findings concerning the 1994 election cycle, counsel for the DSCC requested to meet with the General Counsel and staff of this Office to discuss the Commission's investigation. At our meeting, counsel stated that the DSCC intended to comply fully with the Commission's Subpoena and Order. The DSCC's counsel further stated that it was his clients' desire to resolve this matter expeditiously and to enter into pre-probable cause conciliation.

At this time, this Office has received full compliance to our written discovery from the DSCC. The limited number of contributor interviews (eight) that have been conducted to date have shown that some, but not all, of these contributors believed that their tallied contributions would directly "go to" benefit or were earmarked for the candidate to whom he or she had tallied. During this Office's meeting with counsel for the DSCC, he agreed

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that an unspecified proportion of donors believed that the tallied contributions were directly helping the individual candidates for whom they had tallied their contributions. What is unknown is the extent, i.e., the number of contributors to the DSCC who had intended that their contributions be earmarked for a particular candidate.

9 5 9 4 3 6 9 0 6 5 7

II. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY



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**III. RECOMMENDATIONS**

1. Enter into conciliation, prior to a finding of probable cause to believe, with the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer; Abrams Committee, f/k/a Abrams '92 and Lawrence B. Bittenwieser, as treasurer; Feinstein for Senate '94 and Michael J. Barrett, as treasurer; and Sanford for Senate Committee and Alton G. Buck, as treasurer.
2. Approve the attached proposed conciliation agreement and appropriate letters.

9/17/95  
Date

  
Lawrence M. Noble  
General Counsel

Attachment  
Proposed Conciliation Agreement

Staff assigned: Mary Ann Bumgarner  
Stephan O. Kline

95043690600

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) MUR 3620  
Democratic Senatorial Campaign )  
Committee and Donald J. Foley, )  
as treasurer; )  
Abrams Committee, f/k/a/ )  
Abrams '92 and Lawrence B. )  
Buttenwieser, as treasurer; )  
Feinstein for Senate '94 and )  
Michael J. Barrett, as treasurer; )  
Sanford for Senate Committee and )  
Alton G. Buck, as treasurer )

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the  
Federal Election Commission executive session on April 18,  
1995, do hereby certify that the Commission decided by a  
vote of 6-0 to take the following actions in MUR 3620:

1. Enter into conciliation, prior to a finding of probable cause to believe, with the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer; Abrams Committee, f/k/a/ Abrams '92 and Lawrence B. Buttenwieser, as treasurer; Feinstein for Senate '94 and Michael J. Barrett, as treasurer; and Sanford for Senate Committee and Alton G. Buck, as treasurer.
2. Approve the proposed conciliation agreement and appropriate letters as recommended in the General Counsel's April 14, 1995, report subject to amendment of the Conciliation Agreement as agreed during the meeting discussion.

Attest:

4-20-95  
Date

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

95043690661



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

VIA FACSIMILE and FIRST CLASS MAIL

April 28, 1995

Robert F. Bauer, Esquire  
Perkins Coie  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2011

Kenneth A. Gross, Esq.  
Skadden, Arps, Slate, Meagher & Flom  
1440 New York Avenue, N.W.  
Washington, D.C. 20005-2111

Lyn Utrecht, Esq.  
Oldaker, Ryan & Leonard  
818 Connecticut Avenue, N.W., Suite 1100  
Washington, D.C. 20006

John R. Wallace, Esq.  
Wallace, Creech, Sarda & Zaytoun, L.L.P.  
P.O. Box 12065  
Raleigh, NC 27605

RE: MUR 3620

Democratic Senatorial Campaign Committee  
and Donald J. Foley, as treasurer; Abrams  
Committee, f/k/a Abrams '92, and  
Lawrence B. Battenwieser, as treasurer;  
Feinstein for Senate '94 and Michael J.  
Barrett, as treasurer; and Terry Sanford  
for Senate Committee and Alton G. Buck as  
treasurer

Dear Mr. Bauer, Mr. Gross, Ms. Utrecht and Mr. Wallace:

At Respondents' request, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If Respondents agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission.

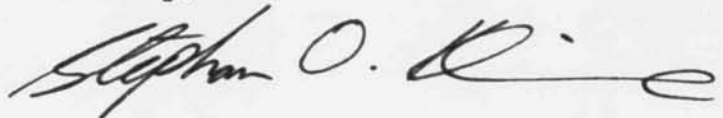
95043690662

MUR 3620

Page 2

Because we have suspended our investigation in MUR 3620 during the pendency of negotiations, please respond to this conciliation agreement no later than close of business, May 8, 1995. In light of the suspension in the investigation, we do not intend to engage in negotiations which will extend beyond thirty days' time. If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact me at (202) 219-3690.

Sincerely,



Stephan O. Kline  
Attorney

Enclosure  
Conciliation Agreement

95043690663





**THE  
KAMBER  
GROUP**

May 4, 1995

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

MAY 8 10 21 AM '95

Corporate  
Headquarters  
1920 L Street, NW  
Suite 700  
Washington, DC  
20036  
(202) 223-8700  
FAX (202) 659-5559

80 East 29th Street  
Suite 200  
New York, NY  
10016  
(212) 679-4540  
FAX (212) 684-0074

19671 Beach Blvd.  
Suite 425  
Huntington Beach, CA  
92648  
(714) 374-2248  
FAX (714) 374-4228

Stephan O. Kline, Esq.  
Federal Election Commission  
999 E Street, N.W., Room 657  
Office of General Counsel  
Washington, DC 20463

Re: MUR 3620, The Kamber Group Incorporated, Lynn Cutler

Dear Mr. Kline:

The Kamber Group ("TKG") and Lynn Cutler are interested in pursuing pre-probable cause conciliation in the above-mentioned MUR and hereby respectfully request the Commission to contact me to commence the process. In addition, TKG and Lynn Cutler hereby respond to the Commission's letter of March 17, 1995.

Responses of The Kamber Group.

1. (a) The TKG resources used were 25 sheets of letterhead, 25 second sheets, 25 envelopes and \$7.25 in postage. The only employee-time related to the mailing was that of a secretary who printed the letter and stuffed the envelopes. Ms. Cutler wrote the letter and prepared the mailing list on her own time.
- (b) No TKG resources were used related to hosting the fundraiser dinner held at Ms. Cutler's home on July 18, 1994 and no one from TKG attended the dinner.
2. (a) Ms. Cutler was billed by TKG immediately upon management's discovery that the invitation was sent on TKG stationery. The July 22, 1994 invoice (a true and correct copy which is attached hereto) was for \$22.00, which represented an estimate of the cost for the stationery, postage, and secretarial time required to stuff the 25 envelopes.
- (b) July 22, 1994.
- (c) A copy of the July 22, 1994 invoice is attached.

Stephan O. Kline, Esq.  
May 4, 1995  
Page 2

- (d) \$22.00; check received on July 22, 1994.
- (e) A personal check from Ms. Cutler.
- (f) The invoice and her check are attached hereto.

3. No.

Responses of Ms. Cutler.

- 1. (a) All of the time involved in planning for and hosting the event was on Ms. Cutler's own time. She wrote the invitation letter at her home and made any follow-up phone calls from there. In addition, please see TKG's response to No. 1 above.
- (b) No TKG resources were used in connection with hosting the fundraiser dinner. Any work related to the hosting of the dinner was done by Ms. Cutler on her own time. She worked with her caterer and spoke with her during the evening from her home.
- 2. (a) Twenty-five women were invited to the event.
- (b) Thirteen women attended.
- (c) Ms. Cutler has no knowledge of the number of contributors who tallied their memberships and/or contributions to the DSCC for the Feinstein campaign. Ms. Cutler also does not know the total amount of money that was tallied.
- (d) See answer to No. 2(c) above.
- 3. (a) Ms. Cutler determined who to invite based on women she knew who she believed would care about meeting Senator Feinstein and might be interested in her re-election and the election and re-election of other Democratic women candidates.
- (b) Ms. Cutler was the sole source for the list of invitees.

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Stephan O. Kline, Esq.

May 4, 1995

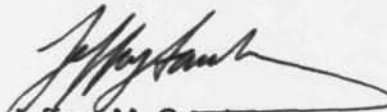
Page 3

- (c) None of the names of the persons invited was taken from any TKG corporate mailing lists.
  - (d) The DSCC did not supply the names and addresses of anyone who was invited to the event.
  - (e) The Feinstein campaign did not supply the names and addresses of anyone invited.
4. Please see TKG's response above.

As indicated in its initial response, TKG does not permit the use of its corporate facilities and identity in connection with campaign related activities proscribed by the FEC regulations. Once it discovered that TKG stationery and postage were used it took immediate action.

I hope this answers the Commission's questions and I am looking forward to hearing from you to discuss further our request for pre-probable cause conciliation. Thank you for your attention.

Sincerely yours,



Jeffrey M. Sandman  
Executive Vice President and General Counsel

JMS:ljf

Enclosures

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THE  
KAMBER  
GROUP

# I N V O I C E

1920 L Street, N.W. Suite 700 • Washington, D.C. 20036 • (202) 223-8700

INVOICE # 66046-9407

JULY 22, 1994

LYNN CUTLER  
1920 L STREET, N.W., STE# 700  
WASHINGTON, DC 20036

RE: DSCC WOMEN'S COUNCIL

GENERAL EXPENSES

POSTAGE & STATIONERY FOR MAILING

\$22.00

CURRENT TOTAL

\$22.00

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LYNN G. CUTLER

6367

July 22 1994

15-333  
540

PAY TO THE  
ORDER OF

*The Stenker Group*

\$ 22.00

Twenty-two and 00/100

DOLLARS



**RIGGS**

The Riggs National Bank of Washington, Inc.  
Member FDIC  
Washington, DC 20015-1278

MEMO

*memo. for paper, etc.*

*hypermarket*

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RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

MAY 17 9 56 AM '95

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
The Kamber Group Incorporated ) MUR 3620  
Lynn Cutler )  
 )

**SENSITIVE**

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On March 7, 1995, the Federal Election Commission (the "Commission") found reason to believe that The Kamber Group Incorporated ("TKG") and Lynn Cutler (the "Respondents") violated 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended, (the "Act") by making a corporate contribution on behalf of the Democratic Senatorial Campaign Committee ("DSCC") and Feinstein for Senate '94. The Commission sought informal discovery from Respondents to determine the nature and scope of the corporate contribution. On May 4, 1995, Respondents submitted their response and have also requested pre-probable cause conciliation. See Attachment 1.

II. ANALYSIS

According to Respondents, Ms. Cutler wrote the June 27, 1994, invitation letter at her home and made any follow-up phone calls from there. The only TKG resources used in the preparation of the invitation were 25 sheets of TKG letterhead, 25 second sheets, 25 envelopes, \$7.25 in postage, and secretarial time for a secretary to print the letter and stuff 25 envelopes. Ms. Cutler was the sole source for the list of

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invitees and none of the persons invited was taken from a TKG corporate mailing list. On July 22, 1994, TKG billed Ms. Cutler \$22.00 which represented an estimate of the cost of the stationery, postage, and secretarial time. Ms. Cutler reimbursed the corporation on the same day. No TKG resources were used in connection with hosting the fundraiser dinner.

Because the amount of the corporate contribution was minimal and it was reimbursed within 30 days of the expenditure, this Office recommends that the Commission take no further action against The Kamber Group Incorporated and Lynn Cutler and close the file as it pertains to these Respondents.

III. RECOMMENDATIONS

1. Take no further action against The Kamber Group Incorporated and Lynn Cutler.
2. Close the file as it pertains to The Kamber Group Incorporated and Lynn Cutler.
3. Approve the appropriate letters.

95043690670  
Date

5/17/95

  
Lawrence M. Noble  
General Counsel

Attachment

1. Response to Discovery

Staff assigned: Stephan O. Kline

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

The Kamber Group Incorporated;  
Lynn Cutler.

)  
)  
) MUR 3620  
)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on May 22, 1995, the Commission decided by a vote of 6-0 to take the following actions in MUR 3620:

1. Take no further action against The Kamber Group Incorporated and Lynn Cutler.
2. Close the file as it pertains to The Kamber Group Incorporated and Lynn Cutler.
3. Approve the appropriate letters, as recommended in the General Counsel's Report dated May 17, 1995.

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

Attest:

5/22/95  
Date

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

Received in the Secretariat: Wed., May 17, 1995 9:56 a.m.  
Circulated to the Commission: Wed., May 17, 1995 11:00 a.m.  
Deadline for vote: Mon., May 22, 1995 4:00 p.m.

lrd

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 23, 1995

Jeffrey M. Sandman  
Executive Vice President and  
General Counsel  
The Kamber Group  
1920 L Street, N.W.  
Suite 700  
Washington, D.C. 20036

RE: MUR 3620  
The Kamber Group  
Lynn Cutler

Dear Mr. Sandman:

In a letter dated March 17, 1995, you were notified that the Federal Election Commission (the "Commission") found reason to believe that The Kamber Group and Lynn Cutler violated 2 U.S.C. § 441b. On May 8, 1995, the Commission received your response to the reason to believe finding.

After considering the circumstances of the matter, the Commission determined on May 22, 1995, to take no further action as to The Kamber Group and Lynn Cutler, and closed the file as to these respondents. The file will be made public within 30 days after the matter has been closed with respect to all other respondents involved.

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

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

Sincerely,

A handwritten signature in dark ink, appearing to read "Stephan O. Kline", followed by a horizontal line and a small flourish.

Stephan O. Kline  
Attorney

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RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

AUG 10 4 15 PM '95

BEFORE THE FEDERAL ELECTION COMMISSION

**SENSITIVE**

In the Matter of )  
Democratic Senatorial )  
Campaign Committee and )  
Donald J. Foley, as )  
treasurer )  
Abrams Committee, f/k/a )  
Abrams '92 and Lawrence B. )  
Buttenwieser, as treasurer )  
Feinstein for Senate '94 and )  
Michael J. Barrett, as )  
treasurer )  
Sanford for Senate )  
Committee and Alton G. )  
Buck, as treasurer )

MUR 3620

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation which has been signed by Robert F. Bauer, counsel to the Democratic Senatorial Campaign Committee. Attachment 1. The attached agreement contains no changes from the agreement approved by the Commission on August 8, 1995. A check for the civil penalty has not been received.

Also, on August 8, 1995, the Commission determined, upon execution of this agreement, to take no further action against the Abrams Committee, f/k/a Abrams '92, and Lawrence B. Buttenwieser, as treasurer; Feinstein for Senate '94 and Michael J. Barrett, as treasurer; and Sanford for Senate Committee and Alton G. Buck, as treasurer.

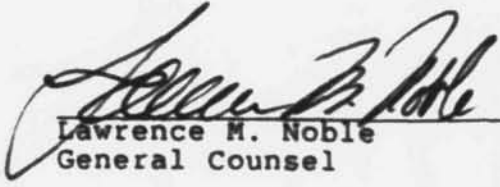
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II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer.
2. Take no further action against the Abrams Committee, f/k/a Abrams '92, and Lawrence B. Bittenwieser, as treasurer; Feinstein for Senate '94 and Michael J. Barrett, as treasurer; and Sanford for Senate Committee and Alton G. Buck, as treasurer.
3. Approve the appropriate letters.
4. Close the file.

Date

8/10/95

  
Lawrence M. Noble  
General Counsel

Attachment

1. Conciliation Agreement

Staff assigned: Stephan O. Kline

950436906/4

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )

Democratic Senatorial Campaign )

Committee and Donald J. Foley, )  
as treasurer; )

Abrams Committee, f/k/a Abrams )

'92 and Lawrence B. Buttenwieser, )  
as treasurer; )

Feinstein for Senate '94 and )

Michael J. Barrett, as treasurer; )

Sanford for Senate Committee and )

Alton G. Buck, as treasurer. )

MUR 3620

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 16, 1995, the Commission decided by a vote of 6-0 to take the following actions in MUR 3620:

1. Accept the conciliation agreement with the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, as recommended in the General Counsel's Report dated August 10, 1995.
2. Take no further action against the Abrams Committee, f/k/a Abrams '92, and Lawrence B. Buttenwieser, as treasurer; Feinstein for Senate '94 and Michael J. Barrett, as treasurer; and Sanford for Senate Committee and Alton G. Buck, as treasurer.

(continued)

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3. Approve the appropriate letters, as recommended in the General Counsel's Report dated August 10, 1995.
4. Close the file.

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

Attest:

8-17-95

Date

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

Received in the Secretariat:	Thurs., Aug. 10, 1995	4:15 p.m.
Circulated to the Commission:	Fri., Aug. 11, 1995	12:00 p.m.
Deadline for vote:	Wed., Aug. 16, 1995	4:00 p.m.

bjr

95043690676



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 22, 1995

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Craig M. Engel, Esq.  
National Republican Senatorial Committee  
425 Second Street, N.E.  
Washington, D.C. 20002

RE: MUR 3620  
Democratic Senatorial Campaign Committee  
and Donald J. Foley, as treasurer,  
The Abrams Committee, f/k/a Abrams '92,  
and Lawrence B. Battenwieser, as  
treasurer,  
Feinstein for Senate '94 and Michael J.  
Barrett, as treasurer,  
Sanford for Senate Committee and Alton G.  
Buck, as treasurer  
Yeakel for Senate Committee and Sidney D.  
Rosenblatt, as treasurer,

Dear Mr. Engel:

This is in reference to the complaints the NRSC filed with the Federal Election Commission on September 29, 1992, October, 23, 1992, and July 18, 1994, concerning possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act") relating to the Democratic Senatorial Campaign Committee's ("DSCC") "tally program."

The Commission found that there was reason to believe the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, violated 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 102.8, 110.6(b)(2)(iii) and 110.6(c)(1). The Commission also found reason to believe that the Abrams Committee, f/k/a Abrams '92, and Lawrence B. Battenwieser, as treasurer; Feinstein for Senate '94 and Michael J. Barrett, as treasurer; and Sanford for Senate Committee and Alton G. Buck, as treasurer, (collectively, the "candidate committees") violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2). The Commission found no reason to believe that Senator Dianne Feinstein and the Yeakel for Senate Committee and Sidney D. Rosenblatt, as treasurer, violated the Act.

On August 16, 1995, the Commission accepted a conciliation agreement submitted by the DSCC in settlement of this entire matter. At the same time, the Commission determined to take no further action against the candidate committees. Accordingly, the

*Celebrating the Commission's 20th Anniversary*

YESTERDAY, TODAY AND TOMORROW  
DEDICATED TO KEEPING THE PUBLIC INFORMED

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Mr. Engel, MUR 3620  
Page 2

Commission closed the file in this matter on the same day. A copy of this agreement is enclosed for your information.

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

Sincerely,



Stephan O. Kline  
Attorney

Enclosure  
Conciliation Agreement

95043690678



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 22, 1995

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Charles H. Bell, Jr.  
Treasurer, U.S. Senator John Seymour Committee  
2100 S. State College Blvd.  
Anaheim, CA 92606

RE: MUR 3620

Dear Mr. Bell:

This is in reference to the complaint the U.S. Senator John Seymour Committee filed with the Federal Election Commission on September 21, 1992, concerning possible violations of the Federal Election Campaign Act of 1971, as amended, (the "Act") by the Feinstein for Senate Committee and its treasurer. Your complaint was merged into another matter under review, MUR 3620, involving similar legal and factual issues.

The Commission found that there was reason to believe Feinstein for Senate '94 and Michael J. Barrett, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2). On August 16, 1995, the Commission accepted a conciliation agreement signed by the Democratic Senatorial Campaign Committee in settlement of this entire matter. At the same time, the Commission determined to take no further action against Feinstein for Senate '94 and Michael J. Barrett, as treasurer. Accordingly, the Commission closed the file in this matter on the same day. A copy of this agreement is enclosed for your information.

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

Sincerely,

Stephan O. Kline  
Attorney

Enclosure  
Conciliation Agreement

*Celebrating the Commission's 20th Anniversary*

YESTERDAY TODAY AND TOMORROW  
DEDICATED TO KEEPING THE PUBLIC INFORMED

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 22, 1995

John R. Wallace, Esq.  
Wallace, Creech, Sarda & Zaytoun, L.L.P.  
P.O. Box 12065  
Raleigh, NC 27605

RE: MUR 3620  
Sanford for Senate Committee  
and Alton G. Buck, as treasurer

Dear Mr. Wallace:

On October 17, 1994, the Federal Election Commission found reason to believe that Sanford for Senate Committee and Alton G. Buck, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2). At the request of the Sanford for Senate Committee, among other Respondents, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

On August 16, 1995, the Commission accepted the conciliation agreement submitted by the Democratic Senatorial Campaign Committee in settlement of this entire matter. At the same time, the Commission determined to take no further action against the Sanford for Senate Committee and Alton G. Buck, as treasurer, and closed the file 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.

*Celebrating the Commission's 20th Anniversary*

YESTERDAY TODAY AND TOMORROW  
DEDICATED TO KEEPING THE PUBLIC INFORMED

95043690600

Mr. Wallace, MUR 3620  
Page 2

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

Sincerely,



Stephan O. Kline  
Attorney

Enclosure  
Conciliation Agreement

95043690681





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 22, 1995

Kenneth A. Gross, Esq.  
Skadden, Arps, Slate, Meagher & Flom  
1440 New York Avenue, N.W.  
Washington, D.C. 20005-2111

RE: MUR 3620  
The Abrams Committee, f/k/a  
Abrams '92, and Lawrence B.  
Buttenwieser, as treasurer

Dear Mr. Gross:

On October 17, 1994, the Federal Election Commission found reason to believe that the Abrams Committee, f/k/a Abrams '92, and Lawrence B. Buttenwieser, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2). At the request of the Abrams Committee, among other Respondents, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

On August 16, 1995, the Commission accepted the conciliation agreement submitted by the Democratic Senatorial Campaign Committee in settlement of this entire matter. At the same time, the Commission determined to take no further action against the Abrams Committee, f/k/a Abrams '92, and Lawrence B. Buttenwieser, as treasurer, and closed the file in this matter.

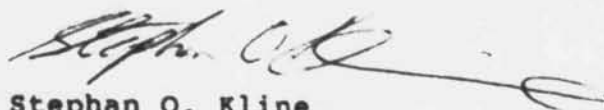
The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any 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.

95043690682

Mr. Gross, MUR 3620  
Page 2

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

Sincerely,



Stephan O. Kline  
Attorney

Enclosure  
Conciliation Agreement

95043690683



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 22, 1995

Lyn Utrecht, Esq.  
Oldaker, Ryan & Leonard  
818 Connecticut Avenue, N.W., Suite 1100  
Washington, D.C. 20006

RE: MUR 3620  
Feinstein for Senate '94 and  
Michael J. Barrett, as  
treasurer

Dear Ms. Utrecht:

On October 17, 1994, the Federal Election Commission found reason to believe that Feinstein for Senate '94 and Michael J. Barrett, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2). After participating in pre-probable cause conciliation discussions, on August 16, 1995, the Commission accepted the conciliation agreement submitted by the Democratic Senatorial Campaign Committee in settlement of this entire matter. At the same time, the Commission determined to take no further action against Feinstein for Senate '94 and Michael J. Barrett, as treasurer, and closed the file 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.

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

Sincerely,

Stephan O. Kline  
Attorney

Enclosure  
Conciliation Agreement



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 22, 1995

Gregory M. Harvey, Esq.  
Morgan, Lewis & Bockius  
2000 One Logan Square  
Philadelphia, PA 19103-6993

RE: MUR 3620  
Yeakel for Senate Committee and  
Sidney D. Rosenblatt, as  
treasurer

Dear Mr. Harvey:

This is to advise you that this matter is now closed. 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.

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

Sincerely,

Stephan O. Kline  
Attorney

95043690685



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 22, 1995

Jeffrey M. Sandman, Esq.  
The Kamber Group  
1920 L Street, N.W., Suite 700  
Washington, D.C. 20036

RE: MUR 3620  
The Kamber Group  
Lynn Cutler

Dear Mr. Sandman:

This is to advise you the captioned matter is now closed. 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.

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

Sincerely,

Stephan O. Kline  
Attorney

95043690666



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 22, 1995

Robert F. Bauer, Esquire  
Perkins Coie  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2011

RE: MUR 3620  
Democratic Senatorial Campaign Committee  
and Donald J. Foley, as treasurer

Dear Mr. Bauer:

On August 16, 1995, the Federal Election Commission accepted the conciliation agreement submitted by the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, in settlement of this entire matter. Accordingly, the file has been closed.

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.

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

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the first \$25,000 of the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

  
Stephan O. Kline  
Attorney

Enclosure  
Conciliation Agreement

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW  
DEDICATED TO KEEPING THE PUBLIC INFORMED

95043690687



BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
Democratic Senatorial )  
Campaign Committee and )  
Donald J. Foley, as )  
treasurer )  
Abrams Committee, f/k/a )  
Abrams '92 and Lawrence B. )  
Buttenwieser, as treasurer )  
Feinstein for Senate '94 and )  
Michael J. Barrett, as )  
treasurer )  
Sanford for Senate )  
Committee and Alton G. )  
Buck, as treasurer )

MUR 3620

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

AUG 16 11 44 AM '95

CONCILIATION AGREEMENT

This matter was initiated by signed, sworn, and notarized complaints by the National Republican Senatorial Committee and the John Seymour for U.S. Senate Committee. The Federal Election Commission ("Commission") found reason to believe the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, ("DSCC" or "Respondents") violated 2 U.S.C. § 441a(a)(8); 11 C.F.R. § 102.8; 11 C.F.R. § 110.6(b)(2)(iii); and 11 C.F.R. § 110.6(c)(1). The Commission also found reason to believe that the Abrams Committee, f/k/a Abrams '92, and Lawrence B. Buttenwieser, as treasurer; Feinstein for Senate '94, and Michael J. Barrett, as treasurer; and Sanford for Senate Committee, and Alton G. Buck, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2).

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NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C.

§ 437g(a)(4)(A)(i).

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. The Democratic Senatorial Campaign Committee is a national committee within the meaning of 2 U.S.C. § 431(14).

2. Donald J. Foley is treasurer of the Democratic Senatorial Campaign Committee.

3. A contribution made by a person, either directly or indirectly, on behalf of a particular candidate, which is in any way earmarked or otherwise directed through an intermediary or conduit, shall be treated as a contribution from such person to such candidate. 2 U.S.C. § 441a(a)(8).

4. Earmarked is defined as a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.

11 C.F.R. § 110.6(b)(1).

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5. A conduit or intermediary means any person (except for a few limited exceptions not applicable to this matter) who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee. 11 C.F.R. § 110.6(b)(2).

6. 11 C.F.R. § 110.6(b)(2)(iii) provides that any person who receives an earmarked contribution shall, among other requirements, forward such earmarked contribution to the candidate or authorized committee in accordance with 11 C.F.R. § 102.8.

7. Section 102.8 provides, inter alia, that earmarked contributions must be forwarded no later than 10 days after receipt.

8. Pursuant to 2 U.S.C. § 441a(a)(8), the intermediary or conduit of an earmarked contribution must report the source of the contribution and the intended recipient to the Federal Election Commission and to the intended recipient. See also, 11 C.F.R. § 110.6(c)(1).

9. Recipient candidates or candidate committees must report earmarked contributions and each conduit or intermediary, who forwards one or more earmarked contributions which in the aggregate exceed \$200 in any calendar year in accordance with 11 C.F.R. § 110.6(c)(2).

10. The national committee of a political party may make expenditures in connection with the general election campaign of a candidate for the office of Senator or of a Representative from a state which is entitled to only one Representative that equals the greater of two cents multiplied by the voting age population of the state, or \$20,000. 2 U.S.C. § 441a(d); 11 C.F.R. § 110.7(b).

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11. The Federal Election Campaign Act of 1971, as amended, (the "Act") does not prohibit party committees from referring to and promoting party candidates in soliciting funds for the committee and candidates may assist party committees in soliciting funds for the committee.

12. The DSCC has utilized and utilizes a "tally" program as a means of raising funds on behalf of Democratic senate candidates. Tallied funds are used in part to fund coordinated party expenditures pursuant to 2 U.S.C. § 441a(d) as well as other DSCC activities on behalf of its candidates.

13. Under this program a contributor has the option to "tally" a contribution to the DSCC in the name of a particular candidate, thereby expressing support for that candidate or crediting the candidate with the raising of the contribution for the DSCC's "coordinated expenditure" program and other activities.

14. As part of the tally program, the DSCC and the candidate committees produced and distributed fundraising solicitations requesting contributions be sent to the DSCC and indicating that the contributors can tally their contributions to a specific candidate.

15. Some of these solicitations can be fairly read to solicit earmarked contributions and did not contain further clarification and explanation to avoid such a reading; the following examples are illustrative:

a. "For those of you who have already maxed out to my campaign, the DSCC tally is an avenue through which you can offer more support";

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b. "[My] race will be close: the tally sheet will be of vital importance";

c. "As an individual, you can contribute up to \$1,000 directly to my committee. Contributions in excess of \$1,000 must be made payable to the DSCC and marked for my tally";

d. "You can tally your [DSCC] membership to [\_\_]'s campaign. This means that those dollars will go to [\_\_]'s effort";

e. The response card to a request from a candidate's committee to serve on the host committee for a fundraiser on behalf of the candidate, which provided no explanation of the DSCC's tally program, read as follows:

Please reserve a space in my name on the invitation as a Benefactor -- enclosed is my check for \$5,000 (payable to the "Democratic Senatorial Campaign Committee" marked for [\_\_]'s tally) or I pledge to raise \$5,000. Patron -- enclosed is my check for \$2,500 (payable to the "Democratic Senatorial Campaign Committee" marked for [\_\_]'s tally) or I pledge to raise \$2,500. Sponsor -- enclosed is my check for \$1,000 (payable to "[\_\_] for Senate") or I pledge to raise \$1,000;

f. "I must raise an additional \$4 million dollars over the next few weeks. . . . I am counting on you to help me pull it off. If you and [\_\_] have any room to make additional federal contributions, I would be grateful if you could tally money to the DSCC for this effort to defeat [my opponent]";

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g. "If you could make a \$2,000 contribution to [my committee] and a \$10,000 contribution to the DSCC for this effort to defeat [my opponent], it would be one of the building blocks of my campaign";

h. "If you choose to contribute through the DSCC, it is very important that you enclose a letter with your contribution indicating that it is meant for [my tally]. I hope you will consider this as our campaign really needs the support".

16. It was the DSCC's stated policy and practice to inform contributors that the DSCC did not accept earmarked contributions, that the amount of tallied contributions was a significant factor that the DSCC took into account in deciding the amount of 441a(d) expenditures to be made on behalf of a particular candidate, and that the DSCC retained final discretion regarding the use of any tallied contribution. The DSCC acknowledges that this information was not always conveyed to contributors.

17. Some percentage of contributors who responded to these "tally" solicitations earmarked their contributions to the DSCC on behalf of a particular candidate.

18. During the 1992 cycle, the DSCC raised approximately \$8,500,000 in tallied funds. During the 1994 cycle, the DSCC raised approximately \$11,000,000 in tallied funds. The Commission is not taking the position that all tallied contributions were earmarked, but, without conducting a full investigation, the percentage of contributors who intended that their tallied contributions be earmarked cannot be determined.

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19. The Commission acknowledges that the DSCC may not have intended to solicit earmarked contributions.

20. The tallied contributions that were earmarked for a designated candidate were not treated as earmarked by the DSCC, viz. forwarded to the recipient candidate committees within 10 days, reported as earmarked by the conduit and recipient, and applied to each contributor's limit to the candidate committee's campaign.

V. Because the parties desire an expeditious resolution of this matter, the parties enter into this conciliation agreement prior to the Commission completing its investigation. The parties agree that --

1. The DSCC and certain of its candidates prepared and distributed fundraising solicitations for the DSCC's tally program which can be fairly and reasonably read to mean that contributions would be earmarked for a particular candidate within the meaning of 2 U.S.C. § 441a(a)(8). In response to these solicitations, some contributors earmarked their contributions to the DSCC for a particular candidate.

2. Consistent with its stated policy and practice of not accepting earmarked contributions, the DSCC did not treat such tallied contributions as being earmarked for the designated candidate. When a contribution has been earmarked by a contributor for a particular candidate, a political committee receiving the contribution must follow the requirements of the Act, which the DSCC did not do in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 102.8, 110.6(b)(2)(iii) and

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110.6(c)(1). Some of the funds received by the candidate committees as coordinated party expenditures from the DSCC were earmarked contributions which the DSCC, inter alia, failed to report as earmarked contributions and the candidate committees, in turn, did not report as earmarked contributions, in violation of 11 C.F.R. § 110.6(c)(2).

3. The parties agree that the solicitations could have been clarified to avoid soliciting earmarked contributions by additional DSCC efforts to assure that its staff and the candidate committees had a better understanding of the tally program and communicated this understanding more effectively to donors when soliciting for the DSCC's tally program.

VI. 1. DSCC will pay a civil penalty to the Commission in the amount of seventy-five thousand dollars (\$75,000), pursuant to 2 U.S.C. § 437g(a)(5)(A); such penalty to be paid as follows:

a. An initial payment of \$25,000 due within 30 days after the effective date of this conciliation agreement.

b. Thereafter, two consecutive monthly installment payments of \$25,000 each, due 60 and 90 days after the effective date of this conciliation agreement.

c. In the event that any installment payment is not received by the Commission by the fifth day after it becomes due, the Commission may, at its discretion, accelerate the remaining payments and cause the entire amount to become due upon ten days written notice to the DSCC. Failure by the Commission to

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accelerate the payments with regard to any overdue installment shall not be construed as a waiver of its right to do so with regard to future overdue installments.

2. The DSCC agrees to implement the following remedial steps.

a. For contributions to the DSCC that appear to be earmarked, the DSCC will refund the contributions or forward the contributions to the designated candidate, in accordance with 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 102.8, 110.6(b)(2)(iii), and 110.6(c)(1).

b. On an on-going basis, the DSCC will provide additional education and training to DSCC staff and participants in the tally program, including the staff of Democratic senate candidates, which will emphasize that: (1) DSCC does not accept contributions earmarked for a particular candidate; (2) tallied contributions will be spent for DSCC activities and programs as the Committee determines within its sole discretion; and (3) contributors must be advised of (1) and (2) above when the DSCC and tally program participants solicit tallied contributions.

c. The DSCC will utilize standard language in its solicitations pertaining to the tally program and, as part of its education and training, will instruct its tally participants to include this language in solicitations distributed by such candidates, their committees and their agents. This language will provide, in substance, that the DSCC does not accept contributions earmarked for a particular candidate and that tallied

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contributions will be used as the DSCC determines in its sole discretion. At a minimum, the language will state that:

The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

d. The DSCC will implement reasonable procedures to review DSCC and Democratic Senate candidate fundraising solicitations pertaining to the tally program to ensure that the solicitations cannot be reasonably read to solicit earmarked contributions, in accordance with the requirements of Section VI(2)(b)-(c) of this agreement.

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. Except as provided in Section VI, paragraph (1)(b)-(c), Respondents shall have no more than 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.

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X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no 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 (LGN)*  
Lawrence M. Noble  
General Counsel

8-21-95  
Date

FOR THE RESPONDENTS:

*Robert F. Bauer*  
Robert F. Bauer  
Counsel to Democratic  
Senatorial Campaign Committee

8-11-95  
Date

95043690698



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3620

DATE FILMED 9/25/95 CAMERA NO. 1

CAMERAMAN SES

95043690699





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Date: 10/4/95

☒ Microfilm  
☐ Public Records  
☐ Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED MUR 3620

95743692213



**Democratic Senatorial Campaign Committee**  
430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447  
Internet: info@dacc.org

RECEIVED  
COMMISSION  
WAIT ROOM  
SEP 19 11 05 AM '95

**J. Robert Kerrey, NE**  
Chairman

September 18, 1995

**Program Chairs**

**Next Majority Trust**  
John Breaux, LA

**Women's Council**  
Barbara Mikulski, MD  
Barbara Boxer, CA

**Leadership Circle**  
Kent Conrad, ND

**Labor Council**  
Russ Feingold, WI

**DSCC Roundtable**  
David Pryor, AR  
Carol Moseley-Braun, IL  
Patty Murray, WA

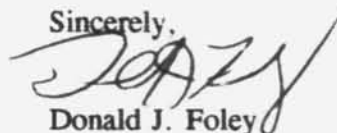
Mr. Lawrence M. Noble  
General Counsel  
Federal Election Commission  
Washington, DC 20463

Dear Mr. Noble:

Enclosed is the first installment of \$25,000 for the August 22, 1995 conciliation agreement. The remaining \$50,000 will be sent in consecutive months per the agreement.

If you have any questions, please contact me at 202-224-2447.

Sincerely,

  
Donald J. Foley  
Executive Director

Date	Invoice No.	Description	Amount	Discount	Net Amount
09/18/95	SD091895		25,000.00		25,000.00
09/18/95		*** CHECK 000797 TOTALS: 1/3 fee per Reconciliation Agree- ment dated 8/22/95	25,000.00		25,000.00

Detach stub before depositing

DEMOCRATIC SENATORIAL CAMP. COMM.

DEMOCRATIC SENATORIAL CAMP. COMM.

430 South Capitol Street, S.E.  
Washington, D.C. 20003

NATIONSBANK  
WASHINGTON, DC

000797

15-120/540

	Date	Check No.	Payee I.D.
***25,000 DOLLARS AND NO CENTS	09/18/95	000797	FEC
			Pay This Amount
			\$*****25,000.00

PAY  
TO THE  
ORDER  
OF

Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

*[Signature]*  
Shelene L. Latta

⑈000797⑈ ⑆054001204⑆ 0002721112⑈

5 1 2 2 6 9 2 4 0 5 0



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

SEPTEMBER 19, 1995

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
SEP 20 10 31 AM '95

TWO WAY MEMORANDUM

TO: OGC Docket

FROM: Rosa E. Swinton Accounting Technician Leslie D. Brown Disbursement Technician

SUBJECT: Account Determination for Funds Received

We recently received a check from DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE, check number 000797, dated 9-18-95, for the amount of \$25,000.00. A copy of the check and any correspondence is being forwarded. Please indicate below which account the funds should be deposited and give the MUR/Case number and name associated with the deposit.

TO: Rosa E. Swinton Accounting Technician Leslie D. Brown Disbursement Technician

FROM: OGC Docket By aa

SUBJECT: Disposition of Funds Received

In reference to the above check in the amount of \$25,000.00, the MUR/Case number is 3620 and in the name of Democratic Senatorial Campaign Committee. Place this deposit in the account indicated below:

☒ Budget Clearing Account (OGC), 95F3875.16

☐ Civil Penalties Account, 95-1099.160

☐ Other: \_\_\_\_\_

Anita M Alexander  
Signature

9-20-95  
Date



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Date: 10/18/95

☒ Microfilm  
☐ Public Records  
☐ Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED MUR 3620

95043692211



## Democratic Senatorial Campaign Committee

430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447

Internet: info@dsc.org

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
MAIL ROOM

OCT 17 11 31 AM '95

J. Robert Kerrey, NE

Chairman

October 16, 1995

Program Chairs

Next Majority Trust

John Breaux, LA

Women's Council

Barbara Mikulski, MD

Barbara Boxer, CA

Leadership Circle

Kent Conrad, ND

Labor Council

Russ Feingold, WI

DSCC Roundtable

David Pryor, AR

Carol Moseley-Braun, IL

Patty Murray, WA

Mr. Lawrence M. Noble  
General Counsel  
Federal Election Commission  
Washington, DC 20463

Dear Mr. Noble:

Enclosed is the second installment of \$25,000 for the August 22, 1995 conciliation agreement. The remaining \$25,000 will be sent next month per the agreement.

If you have any questions, please contact me at 202-224-2447.

Sincerely,

A handwritten signature in dark ink, appearing to read "Don Foley".  
Donald J. Foley  
Executive Director



Date	Invoice No.	Description	Amount	Discount	Net Amount
10/16/95	SD091695	2nd pay.per Recon.	25,000.00		25,000.00
10/16/95		*** CHECK 000798 TOTALS:	25,000.00		25,000.00

Detach stub before depositing

DEMOCRATIC SENATORIAL CAMP. COMM.

DEMOCRATIC SENATORIAL CAMP. COMM.

430 South Capitol Street, S.E.  
Washington, D.C. 20003

NATIONSBANK  
WASHINGTON, DC

000798

15-120/540

	Date	Check No.	Payee I.D.
***25,000 DOLLARS AND NO CENTS	10/16/95	000798	FEC

Pay This Amount
*****25,000.00

PAY  
TO THE  
ORDER  
OF

Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

*[Signature]*  
Shalini Sood

⑈000798⑈ ⑆054001204⑆ 0002721112⑈



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

OCT 18 9 42 AM '95

10/17/95

TWO WAY MEMORANDUM

TO: OGC, Docket

FROM: Rosa E. Swinton  
Accounting Technician

SUBJECT: Account Determination for Funds Received

We recently received a check from Democratic  
Senatorial Campaign Cmte., check number 000798, dated  
10/16/95, and in the amount of \$25,000.00.  
Attached is a copy of the check and any correspondence that  
was forwarded. Please indicate below the account into which  
it should be deposited, and the MUR number and name.

TO: Rosa E. Swinton  
Accounting Technician

FROM: OGC, Docket By aa

In reference to the above check in the amount of  
\$25,000.00, the MUR number is 3620 and in the name of  
Democratic Senatorial Campaign Cmte. The account into  
which it should be deposited is indicated below:

- ☒ Budget Clearing Account (OGC), 95F3875.16
- ☐ Civil Penalties Account, 95-1099.160
- ☐ Other: \_\_\_\_\_

Anita Alexander  
Signature

10-18-95  
Date



FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

Date: 11/29/95

☒ Microfilm  
☐ Public Records  
☐ Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED MUR 3620

95043701135



## Democratic Senatorial Campaign Committee

430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447

Internet: info@dacc.org

J. Robert Kerrey, NE

Chairman

November 16, 1995

Program Chairs

Next Majority Trust

John Breaux, LA

Women's Council

Barbara Mikulski, MD

Barbara Boxer, CA

Leadership Circle

Kent Conrad, ND

Labor Council

Russ Feingold, WI

DSCC Roundtable

David Pryor, AR

Carol Moseley-Braun, IL

Patty Murray, WA

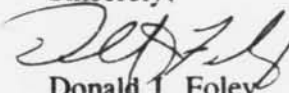
Mr. Lawrence M. Noble  
General Counsel  
Federal Election Commission  
Washington, DC 20463

Dear Mr. Noble:

Enclosed is the last installment of \$25,000 for the August 22, 1995 conciliation agreement. This \$25,000 should fulfill the terms of the agreement.

If you have any questions, please contact me at 202-224-2447.

Sincerely,

  
Donald J. Foley  
Executive Director

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
ACCOUNTING OFFICE  
Nov 20 11 20 AM '95

Date	Invoice No.	Description	Amount	Discount	Net Amount
11/16/95	SD111695	Final pay.perAgree	25,000.00		25,000.00
11/16/95		*** CHECK 000801 TOTALS:	25,000.00		25,000.00

Detach stub before depositing

DEMOCRATIC SENATORIAL CAMP. COMM.

DEMOCRATIC SENATORIAL CAMP. COMM.

430 South Capitol Street, S.E.  
Washington, D.C. 20003

NATIONSBANK  
WASHINGTON, DC

000801

15-120/540

Date	Check No.	Payee I.D.
11/16/95	000801	FEC
***25,000 DOLLARS AND NO CENTS		
Pay This Amount		
\$*****25,000.00		

PAY  
TO THE  
ORDER  
OF

Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

*[Signature]*

⑈000801⑈ ⑆054001204⑆ 0002721112⑈

Vendor: FEC Federal Election Commission

Check No.: 000801

Check Date: 11/16/95

Date	Invoice No.	Description	Amount	Discount	Net Amount
11/16/95	SD111695	Final pay.perAgree	25,000.00		25,000.00
11/16/95		*** CHECK 000801 TOTALS:	25,000.00		25,000.00

Detach stub before depositing

DEMOCRATIC SENATORIAL CAMP. COMM.



RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

Nov 24 10 04 AM '95

FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

NOVEMBER 22, 1995

Nov 24 10 03 AM '95

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

**TWO WAY MEMORANDUM**

TO: OGC Docket

FROM: Rosa E. Swinton Accounting Technician Leslie D. Brown Disbursement Technician

SUBJECT: Account Determination for Funds Received

We recently received a check from DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE, check number 000801, dated NOVEMBER 16, 1995, for the amount of \$25,000.00. A copy of the check and any correspondence is being forwarded. Please indicate below which account the funds should be deposited and give the MUR/Case number and name associated with the deposit.

TO: Rosa E. Swinton Accounting Technician Leslie D. Brown Disbursement Technician

FROM: OGC Docket By aa

SUBJECT: Disposition of Funds Received

In reference to the above check in the amount of \$25,000.00 the MUR/Case number is 3620 and in the name of Democratic Senatorial Campaign Cmte.. Place this deposit in the account indicated below:

☐ Budget Clearing Account (OGC), 95F3875.16

☒ Civil Penalties Account, 95-1099.160

☐ Other: \_\_\_\_\_

Anita Alexander  
Signature

11-28-95  
Date





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Date: 5/14/97

✓ Microfilm

       Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED MUR 3620

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BEFORE THE FEDERAL ELECTION COMMISSION  
OF THE UNITED STATES OF AMERICA

In the matter of:

Democratic Senatorial Campaign Committee and  
Paul Johnson, as Treasurer

Matter Under Review 3620

EMERGENCY MOTION FOR  
CIVIL ENFORCEMENT  
OF CONCILIATION AGREEMENT

SEP 26 2 51 PM '96

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

The Democratic Senatorial Campaign Committee ("DSCC") is knowingly and willfully violating the Conciliation Agreement involving its tally program in MUR 3620. As a result, the Federal Election Commission ("Commission") must act pursuant to 2 U.S.C. § 437g(a)(5)(D) and Section VII of the Conciliation Agreement governing MUR 3620 and immediately institute a civil action for relief in the United States District Court for the District of Columbia.

As the attached documents from the DSCC itself demonstrate, the DSCC is continuing the same illegal earmarking of excessive contributions to Democratic Senate candidates through the "tally program" it agreed it would cease in the MUR 3620 Conciliation Agreement. As a result, pursuant to 2 U.S.C. § 437g(a)(6) the Commission needs to obtain temporary and permanent injunctions to prevent the DSCC from:

(1) continuing to violate the Conciliation Agreement through its illegal tally activities being conducted at present, including at its gala fundraising dinner held tonight, September 26, 1996, and

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(2) forwarding any of the tally funds raised in violation of the Conciliation Agreement to any of the Democratic Senate candidates in the form of coordinated expenditures during the 1995-96 cycle.

Pursuant to 2 U.S.C. § 437g(6)(C), the Commission must also seek a civil penalty equaling 200 percent of the amount of illegal tally funds raised by the DSCC in violation of the Conciliation Agreement.

Given the imminency of the 1996 U.S. Senate elections and the potential for the tally program activities to irreparably damage the integrity and fairness of such elections, it is imperative that the Committee initiate a civil action seeking the requested relief during its next Executive Session scheduled for October 1, 1996. The Commission has the authority to act immediately on this Motion because it is not an enforcement action, but rather a violation of a signed Conciliation Agreement.

### **INTRODUCTION**

This Motion, filed by the National Republican Senatorial Committee ("NRSC"),<sup>1</sup> is based on internal DSCC documents, some of which were never turned over to the Commission as part of MUR 3620. They demonstrate that the tally program never was, and is not now, an informal fundraising program. Rather, the documents show that the tally program has always been a deliberate and systematic scheme to raise illegal earmarked and excessive contributions from donors who have already given the legal maximum to a candidate and then to funnel such

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<sup>1</sup> The NRSC is the original complainant in MUR 3620.

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excessive contributions to the specific candidates disguised in the form of DSCC coordinated expenditures.

Rather than complying with the requirements of the Conciliation Agreement, the DSCC has attempted instead to evade the Agreement by adding cosmetic language to some solicitations in an attempt to create the appearance of compliance. The evidence set forth below demonstrates that, beneath this veneer, the DSCC continues to use its tally program in the same manner it admitted in MUR 3620 is illegal. The prompt injunctive relief permitted by the Federal Election Campaign Act ("Act") is the only way to end this circumvention of federal contribution limitations.

Given the DSCC's clear violation of the letter and spirit of the Conciliation Agreement, the Commission must immediately institute a civil action for injunctive relief in the United States District Court for the District of Columbia.

### FACTS

MUR 3620 originated as the result of a complaint filed with the Commission on September 24, 1992 charging the DSCC and several Democratic Senate candidates with "engaging in a common scheme or design to circumvent and violate federal election law when it comes to raising campaign contributions." NRSC Complaint, attached as Exhibit 1.

This "common scheme" was the DSCC's "tally" program, a fundraising mechanism under which contributors to the DSCC can "tally" their contribution to a specific candidate or group of candidates so that the DSCC will use those funds for its coordinated expenditures on behalf of such candidates. To raise funds for this program, the DSCC and its candidates

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produced and distributed written and oral solicitations requesting that contributions be sent to the DSCC and informing potential contributors of the tally option.

Although the DSCC argued that this tally system was merely an "informal accounting process established by the DSCC to keep track of the amount of money raised for the Committee's use by a particular candidate" (DSCC Response, attached as Exhibit 2), the Commission rejected that argument. The Commission's ruling was based on substantial evidence that the tally program was nothing more than an elaborate scheme to evade federal contribution limitations by knowingly soliciting and collecting contributions "earmarked" for specific candidates, and then funneling such funds back to the specific candidates in the form of coordinated expenditures. *See* Exhibit 1. The DSCC admitted that the total amount of money "tallied" by a particular candidate was "taken into consideration as one of several factors used by the DSCC" in determining the level of coordinated expenditures made on behalf of such candidate. DSCC Response, attached as Exhibit 2.

Based on the evidence presented by the NRSC and the Commission's own investigation, the Commission found on October 4, 1994 that it had "reason to believe" that the DSCC had violated the federal election laws and regulations governing earmarked contributions, including 2 U.S.C. § 441a(a)(8), 11 C.F.R. § 110.6(c)(1), 11 C.F.R. § 110.6(b)(2)(iii), and 11 C.F.R. § 102.8. *See* FEC Certification, Exhibit 3. Shortly thereafter, the Commission initiated an informal conciliation process with the DSCC regarding MUR 3620.

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**The Conciliation Agreement:**

This process resulted in a Conciliation Agreement signed by the DSCC on August 11, 1995 and the Commission on August 21, 1995. See Conciliation Agreement, Exhibit 4. In this Conciliation Agreement:

- The DSCC voluntarily and expressly agreed that its tally program operations in the 1991-92 and 1993-94 election cycles were soliciting and generating illegal earmarked contributions that were then given to Democratic Senate candidates as coordinated expenditures.
- The DSCC agreed to pay a civil penalty of \$75,000 for violating the Act, the largest fine to date against any political party committee.
- The DSCC also voluntarily and expressly agreed to radically alter its tally program and corresponding solicitations by implementing a series of remedial measures designed to ensure that illegal earmarking activities would not reoccur in 1995-96 and future election cycles. Specifically, the DSCC agreed it would:
  1. not accept any earmarked contributions in the future and would refund any such contribution to the donor or forward it directly to the designated candidate so it would count against the donor's limits to that candidate;
  2. provide on-going education and training to DSCC staff and all other tally participants regarding the prohibition against earmarked contributions;
  3. utilize standard language in all tally program solicitations informing potential contributors that the DSCC does not accept earmarked contributions and that all tallied contributions would be distributed as the DSCC determines within its sole discretion; and

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4. implement procedures to review all tally program solicitations to make sure that they do not solicit earmarked contributions.

- The DSCC and the Commission agreed that the DSCC would be taken directly to court for any similar illegal tally activities in the future or any other failure to comply with the terms of the Conciliation Agreement.

Simply stated, the DSCC promised the Commission it would discontinue its illegal tally program activities or else be taken to court. However, as this Motion and the attachments demonstrate, the DSCC is continuing the exact activities it promised would cease. As such, the DSCC is violating the Conciliation Agreement. In reality, the DSCC has made only cosmetic changes to its tally program in the form of over-lawyered "disclaimer language" intended to give the appearance of compliance. See, e.g., Solicitation for DSCC's 1996 "Take Back the Senate Dinner," Exhibit 5.<sup>2</sup> Despite the obscure language, the DSCC has knowingly and willfully continued its tally program as it has in the past; namely, to avoid federal contribution limitations by soliciting and collecting contributions illegally earmarked for a specific candidate and then funneling such funds back to Democratic Senate candidates under the guise of coordinated expenditures.

#### **How the Tally Program Works:**

The DSCC's continuing use of its tally program to evade federal election law contribution limits in violation of the Conciliation Agreement is being carried out for all its Senate candidates.

<sup>2</sup> Buried in the back of the fundraising solicitation for this "Take Back the Senate Dinner," the DSCC includes language stating that it "does not accept contributions earmarked for a particular candidate" and that tallied contributions will be spent as the DSCC determines "within its sole discretion." See Exhibit 5. No such language appears on the contribution card accompanying the solicitation. *Id.* Most significantly, as shown herein, the actions of the DSCC and its candidates belie the language and the Conciliation Agreement.

Illustrative are the DSCC's 1995-96 tally activities for Senator Carl Levin from Michigan and his campaign committee (the "Friends of Senator Carl Levin"). Here's how it works.

First, the DSCC actively coordinates with Senator Levin in the preparation and distribution of oral and written solicitations for the tally program. As the documents attached to this Motion demonstrate, these solicitations represent thinly veiled attempts to obtain illegal earmarked contributions from certain targeted donors, especially those individuals who have already given the legal maximum in direct contributions to the Levin campaign:

1. In an October 9, 1995 letter attached as Exhibit 6 regarding a DSCC fundraising dinner, Senator Levin tells the Chrysler Corporation Nonpartisan PAC that their "support of the DSCC is very important to me" and stresses that "[i]t would be a tremendous help to me if you would buy a ticket or table and credit your contribution to me." (emphasis added). Levin also states that this "fundraising event is crucial to my reelection effort next year." This direct soliciting of an earmarked contribution in violation of the Conciliation Agreement is not negated by weak disclaimer language that the "amount of money to be spent by the DSCC on my behalf is based in part on my tally, among other factors. . ."

2. In the December 29, 1995 solicitation letter to the National Structured Settlements PAC attached as Exhibit 7, Senator Levin describes in detail his Senate race, the "spending capabilities" of his opponents, and his campaign's need for additional funds to compete in this "tremendously expensive race." Following this description of his own campaign's need for money, Levin goes on to state that he is "hoping you will be able to help me in a very specific way: would you be able to tally all or part of your 1996 DSCC

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contribution to me?" (emphasis added). Again, this clear request for an earmarked contribution cannot be negated by the weak disclaimer language in the letter.

3. In the April 17, 1995 "call sheets" attached as Exhibit 8, the DSCC encourages Senator Levin to orally solicit contributions to the DSCC for his tally from the United Steelworkers of America, the National Association of Letter Carriers, the Maintenance of Way Employees, the International Association of Fire Fighters, the Kellogg Better Government Committee, the International Ladies Garment Workers Union, the Service Employees International Union, the American Federation of State, County & Municipal Employees, the United Rubber Workers, Comerica Incorporated PAC, and Mr. and Mrs. Jerome Zimmerman.<sup>21</sup> Many of these call sheets suggest that the purpose of the calls was to solicit earmarked contributions for Levin, such as: (a) "the monies may be tallied to your campaign"; (b) "Please ask them to join the DSCC Roundtable by making a \$5,000 contribution and tallying to you"; and (c) "she maxed to your last campaign" and her husband "has given to you as well", so "[a]sk them to attend the DSCC reception . . . and tally \$5,000 to your campaign."

None of the above described solicitation documents contain the "standard" disclaimer language required by the Conciliation Agreement. Moreover, given that these documents can be read to solicit earmarked contributions, it is clear that the DSCC has not been providing on-going

<sup>21</sup> These call sheets are dated before the signing of the Conciliation in August of 1995, but they were never turned over to the Commission as part of MUR 3620. Despite being dated prior to the signing of the Conciliation Agreement, these call sheets were intended to solicit tally funds during the 1995-96 election cycle and therefore are demonstrative of the DSCC's continuing violation of the terms of the Conciliation Agreement throughout the cycle.



training to its tally participants regarding the prohibition against earmarked contributions or screening the solicitations of its tally participants as required by the Conciliation Agreement.

After such written and oral solicitations are made, the next step is for the contributors to respond with contributions to the DSCC specifically earmarked for Senator Levin's campaign, as demonstrated by the following documents:

1. In the June 21, 1996 letter attached at Exhibit 9, a contributor informs Senator Levin that he is "a participant in the DSCC Majority Trust Program and perhaps could be of some help via that mechanism." The contributor goes on to state that "a Majority Trust 'tally' to the Levin Campaign in the amount of \$1,500 has been made."

2. In the August 5, 1996 letter attached at Exhibit 10, the same contributor again writes to Senator Levin to reiterate that "a DSCC 'tally' in the amount of \$1,500 was made to your campaign" and to wish Senator Levin "every success" in his campaign.

3. In the June 25, 1996 letter attached at Exhibit 11, another contributor earmarks \$2,000 to the Levin campaign.

4. In the April 4, 1996 letter attached at Exhibit 12, a representative of the National Committee to Preserve Social Security and Medicare instructs the DSCC to add a \$2,000 contribution "to Senator Carl Levin's Tally Sheet."

The DSCC keeps a specific, detailed accounting of all such earmarked contributions and periodically provides Senator Levin with a "Tally Report" listing the names of all contributors to his tally as well as the dates and amounts of the contributions. Three such Tally Reports sent to Senator Levin in January, March and June of 1996 are attached at Exhibit 13. These Tally Reports show that the DSCC has violated the Conciliation Agreement and the Act by accepting

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contributions earmarked for Senator Levin from a wide range of individuals and political action committees during the 1995-96 election cycle,<sup>41</sup> including:

1. A \$5,000 contribution on March 14, 1996 from Chrysler Corporation's political action committee, which appears to be the same organization that Senator Levin solicited in the previously discussed October 9, 1995 letter attached at Exhibit 6.

2. A \$4,500 contribution on October 25, 1995 and another \$2,500 on March 31, 1996 from the American Federation of State, County and Municipal Employees PAC, the same organization that was targeted in one of Senator Levin's solicitation "call sheets" attached at Exhibit 8.

3. A \$2,000 contribution on February 29, 1996 from the National Committee to Preserve Social Security and Medicare PAC. This same organization wrote to Senator Levin on April 4, 1996 informing him of this earmarked contribution. See Exhibit 12.

4. A \$4,000 contribution on March 15, 1995. As indicated in the June 25, 1996 letter attached at Exhibit 11, the contributor has also earmarked an additional \$2,000 to the Levin campaign.

Consistent with the tally program's purpose of circumventing federal contribution limitations, reports on file with the Commission show that many of the contributors listed in Senator Levin's Tally Reports provided their earmarked contribution after, or at about the same time, they gave the maximum direct contribution to the Friends of Senator Carl Levin

<sup>41</sup> Given that the most recent of the attached Tally Reports is dated June 6, 1996, it is certain that the DSCC has subsequently received additional contributions earmarked for Senator Levin from other individuals and PACs. For example, the letters attached at Exhibits 9 and 10 indicate that the contributor provided the DSCC with a contribution earmarked for Senator Levin on June 20, 1996. The discovery process in court can identify other contributors who have provided similar earmarked contributions since June 6, 1996.

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Committee. These contributors include the American Federation of State, County and Municipal Employees, the United Auto Workers, Maryanne Hanson Alix, Madeleine Berman, Mandell Berman, Maurice Cohen, Sadie Cohn, Linda Dresner, Dorothy Gerson, Irwin Green, Doreen Hermelin, Robert Larson, David Mondry, Miriam Mondry, Richard Rogel, Susan Rogel, Joel Tauber and Timothy Wuliger.<sup>2</sup> See Exhibit 13.

According to the DSCC's Reports of Receipts and Disbursements on file with the Commission, the DSCC has not refunded or forwarded any of the earmarked contributions of these or any of the contributors listed in Senator Levin's Tally Reports as required by the Conciliation Agreement. Moreover, the fact that the DSCC and its tally participants are still receiving and accepting earmarked contributions in the 1995-96 election cycle indicates that the DSCC has also violated the Conciliation Agreement by failing to: (1) train or educate its tally participants regarding earmarked contributions; (2) advise potential contributors about laws governing earmarked contributions through the required "standard" disclaimer language; and (3) adequately screen all solicitations of the tally participants.

Once these earmarked contributions are collected and tallied to Senator Levin, the final step is for the DSCC to funnel these funds back to the Levin campaign in the form of coordinated expenditures. The "Tally Reports" sent by the DSCC to Senator Levin in January, March and June of 1996 demonstrate this *quid pro quo*. See Exhibit 13. In these reports, Senator Levin is given a detailed, side-by-side accounting of: (1) the total amount of coordinated expenditures allowed to be allocated to Levin's campaign; (2) the total tally amount raised by Levin to date; and (3) the total amount of coordinated expenditures allocated to Levin's campaign to date.

<sup>2</sup> It is expected that this list of names will grow when the DSCC files its next report with the Commission.



According to the June 6th Tally Report, the amount of coordinated expenditures available for Levin's race in Michigan at the time was \$886,690, the total that Levin had raised in earmarked tally contributions was \$542,000, and the total amount he had received was \$17,500.

Collectively, these various steps within the DSCC's tally program comprise a willful and knowing circumvention of federal contribution limitations by soliciting earmarked contributions from donors who have already made the maximum direct contribution to specific Democratic Senate candidates.

Senator Levin's situation illustrates how the DSCC is violating the Conciliation Agreement and the Act by continuing to solicit and collect illegal earmarked contributions. However, the Levin campaign is not alone. Overwhelming evidence shows the DSCC using the same tally scheme they admitted in MUR 3620 is illegal to benefit all of the Democratic Senate candidates during the 1995-96 election cycle:

1. In the memo attached at Exhibit 14 regarding the "1995 DSCC Annual Senate Dinner," the DSCC informs recipients that "[c]ontributions to the 1995 Fall dinner may be tallied to any Democratic U.S. Senator or any 1996 nominee for the U.S. Senate."
2. In the January 10, 1996 *Rocky Mountain News* article attached at Exhibit 15, the reporter describes a letter sent by DSCC Chairman Senator Bob Kerrey of Nebraska to all five Democratic Senate candidates in Colorado. In this letter, Kerrey asks the candidate to help raise \$10,000 for a DSCC Majority Trust event in Aspen and "reminds the candidate and his donors that the money raised for the DSCC can be earmarked right back to the candidate" if he or she wins the primary. [emphasis added].

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3. In the January 31, 1996 letter attached at Exhibit 16, the Transportation Political Education League, a subsidiary of the United Transportation Union ("UTU"), instructs the DSCC to tally a \$14,250 contribution to Senator Paul Wellstone. This letter seems to have been generated at the request of the Wellstone For Senate committee based on a fax sent to the UTU stating "that without something from the UTU the DSCC will hold-up crediting your check to Paul." Wellstone For Senate Fax, Exhibit 17.

4. In the June 25, 1996 letter attached as Exhibit 11, a contributor tells the DSCC to tally his \$5,000 contribution to the Senate campaigns of Carl Levin (\$2,000), Dick Durbin (\$1,000), Tom Harkin (\$1,000) and John Kerry (\$1,000).

5. In the August 7, 1996 letter attached as Exhibit 18, DSCC Chairman Bob Kerrey writes to Virginia Democratic Senate candidate Mark Warner asking him to participate in the "Annual Senate Issues Conference and Dinner" on September 26, 1996. Kerry also: (a) informs Warner that "you have raised \$97,250.00 against your overall tally of \$636,442.00," which, significantly, is the exact amount of coordinated expenditures permitted in Virginia; (b) stresses that the event "will provide a terrific opportunity" for Warner "to raise significant tally money"; and (c) states that "this dinner will give you a chance to meet our major donors from across the country who will in turn be supportive of your campaign's fundraising efforts."

6. In August 30, 1996 *Associated Press* report attached at Exhibit 19, Illinois Democratic Senate Candidate Dick Durbin is quoted as stating that "[t]he only way the Democratic Senatorial Campaign Committee money goes to me is if I raise the money and it is tallied to me." (emphasis added).

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7. An examination of the DSCC's Reports of Receipts and Disbursements shows that the DSCC is not, despite its promises in the signed Conciliation Agreement, refunding contributions that appear to be earmarked or forwarding the funds to the candidate as required by 2 U.S.C. § 441a(a)(8).

The bottom line is that the DSCC has not altered its tally program in any substantive manner during the 1995-96 cycle to comply with the requirements of the Conciliation Agreement. All the DSCC has done is incorporate cosmetic "disclaimer" language into some of its tally solicitations. But actions speak louder than words; the DSCC continues to use the tally program as it has in prior election cycles to circumvent federal contribution limitations by soliciting and accepting illegal earmarked contributions disguised as legitimate contributions to the DSCC, and then funneling such funds to the "tallied" candidate in the form of coordinated expenditures.

Given these violations of the Conciliation Agreement in MUR 3620, the Commission is required to initiate promptly a civil action against the DSCC in the United States District Court for the District of Columbia.

## LAW

### **I. Conciliation Agreement in MUR 3620**

Pursuant to the Conciliation Agreement regarding MUR 3620 signed by the DSCC on August 11, 1995 and the Commission on August 21, 1995, the parties expressly and voluntarily agreed to the following:

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1. The "DSCC and certain of its candidates prepared and distributed fundraising solicitations for the DSCC's tally program which can be fairly and reasonably read to mean that contributions would be earmarked for a particular candidate." Section V(1).

2. In response to the DSCC tally solicitations, "some contributors earmarked their contributions to the DSCC for a particular candidate." *Id.*

3. The DSCC did not treat such earmarked contributions "as being earmarked for the designated candidate" in violation of 2 U.S.C. § 441a(a)(8), 11 C.F.R. § 102.8, 11 C.F.R. § 110.6(b)(2)(iii) and 11 C.F.R. § 110.6(c)(1). Section V(2).

4. "Some of the funds received by the candidate committees as coordinated party expenditures from the DSCC were earmarked contributions which the DSCC . . . failed to report as earmarked contributions" in violation of 11 C.F.R. § 110.6(b)(2)(iii). *Id.*

5. The solicitations used in the DSCC tally program "could have been clarified to avoid soliciting earmarked contributions." Section V(3).

6. The DSCC will pay a \$75,000 civil penalty to the Commission for violating the Act. Section VI(1).

7. The DSCC will implement remedial measures to ensure that any contributions received by the DSCC in the future through its tally program that "appear to be earmarked" will be refunded to the contributor or forwarded to the designated candidate in accordance with the requirements of the Act. Section VI(2)(a).

8. The DSCC will provide on-going "education and training to DSCC staff and participants in the tally program, including the staff of Democratic Senate candidates, which will emphasize that: (1) DSCC does not accept contributions earmarked for a

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particular candidate; (2) tallied contributions will be spent for DSCC activities and programs as the Committee determines within its sole discretion; and (3) contributors must be advised of (1) and (2) above when the DSCC and the tally program participants solicit tallied contributions." Section VI(2)(b).

9. The DSCC will "utilize standard language" in its future solicitations pertaining to the tally program which states, at a minimum, "that the DSCC does not accept contributions earmarked for a particular candidate and that tallied contributions will be used as the DSCC determines in its sole discretion." The DSCC also agreed to instruct all of the candidates and committees that participate in the tally program to include this standard language in any tally solicitations that they distribute. Section VI(2)(c).

10. The DSCC "will implement reasonable procedures to review DSCC and Democratic Senate candidate fundraising solicitations pertaining to the tally program to ensure that the solicitations cannot be reasonably read to solicit earmarked contributions." Section VI(2)(d).

11. The Commission, on the request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) or on its own motion, may review compliance with the Conciliation Agreement. Section VII. If the Commission determines that any provision of the Conciliation Agreement has been violated, the Commission "may institute a civil action for relief in the United States District Court for the District of Columbia." *Id.*

## **II. Earmarked Contributions**

Under 2 U.S.C. § 441a(a)(8), a contribution made by a person, either directly or indirectly, on behalf of a particular candidate, which is in any way earmarked or otherwise

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directed through an intermediary or conduit, shall be treated as a contribution from such person to such candidate. The term "earmarked" is defined at 11 C.F.R. § 110.6(b)(1) as a designation, instruction or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee. The term "conduit or intermediary" is defined at 11 C.F.R. § 110.6(b)(2) as any person who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee.

Under 11 C.F.R. § 110.6(b)(2)(iii), any person who receives an earmarked contribution is required to forward such earmarked contribution to the candidate or the candidate's authorized committee in accordance with 11 C.F.R. § 102.8, which provides that earmarked contributions must be forward no later than 10 days after receipt.

Pursuant to 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c)(1), the intermediary or conduit of an earmarked contribution must report the source of the contribution and the intended recipient to the Commission and to the intended recipient. Recipient candidates or candidate committees are in turn required by 11 C.F.R. § 110.6(c)(2) to report earmarked contributions and each conduit or intermediary who forwards one or more earmarked contributions which in the aggregate exceed \$200 in any calendar year.

### **III. Excessive Contributions**

Under 2 U.S.C. § 441a(a)(1)(A), no person shall make contributions to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed \$1,000. The term "person" includes an individual, partnership, committee, association, corporation, labor organization or any other organization or group of persons.

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2 U.S.C. § 431(11). All contributions by a person to a candidate, "including contributions which are in any way earmarked or otherwise directed to the candidate through an intermediary or conduit," are contributions from the person to the candidate. 11 C.F.R. § 110.6(a).

Under 2 U.S.C. § 441a(a)(2)(A), no multi-candidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed \$5,000.

Under 2 U.S.C. § 441a(f), no candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the limitations set forth in section 441a of the Act. Furthermore, no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under section 441a of the Act.

#### **IV. Violation of a Conciliation Agreement**

Under 2 U.S.C. § 437g(a)(5)(D), the Commission may institute a civil action in accordance with 2 U.S.C. § 437g(a)(6)(A) against any person that it believes has violated any provision of a conciliation agreement.<sup>62</sup> For the Commission to obtain relief in any such civil action, the Commission need only establish that the person has violated, in whole or in part, any requirement of the conciliation agreement. 2 U.S.C. § 437g(a)(5)(D).

Under 2 U.S.C. § 437g(a)(6)(A), the Commission may, upon the affirmative vote of 4 of its members, institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order, in the district court of the United States for the

<sup>62</sup> See also, ¶ VII of the Conciliation Agreement, Exhibit 4.

district in which the person against whom the action is brought is found, resides, or transacts business.

Upon a proper showing that the person has violated or is about to violate the conciliation agreement, 2 U.S.C. § 437g(a)(5)(B) allows the court to grant a permanent or temporary injunction, restraining order, or other order, including a civil penalty not exceeding the greater of \$5,000 or an amount equal to any contribution or expenditure involved in such violation. If the court determines that the Commission has established that the person has committed a knowing and willful violation of the conciliation agreement, 2 U.S.C. § 437g(a)(6)(C) allows the court to impose a civil penalty not exceeding the greater of \$10,000 or an amount equal to 200 percent of any contribution or expenditure involved in such violation.

### DISCUSSION

- I. **THE DSCC HAS KNOWINGLY AND WILLFULLY VIOLATED THE TERMS OF THE CONCILIATION AGREEMENT DURING THE 1995-96 ELECTION CYCLE.**
  - A. **THE DSCC HAS VIOLATED SECTION VI(2)(a) OF THE CONCILIATION AGREEMENT BY CONTINUING TO SOLICIT AND ACCEPT ILLEGAL EARMARKED CONTRIBUTIONS.**

Pursuant to Section VI(2)(a) of the Conciliation Agreement ("Agreement"), the DSCC voluntarily and expressly agreed to refrain from soliciting and accepting earmarked contributions by refunding all such contributions to the donor or forwarding them to the designated candidate. See Conciliation Agreement, Exhibit 4.

Yet, as their own documents and actions show, the DSCC has not stopped the tally program and the techniques the DSCC admitted are unlawful. The only change has been in the

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program's packaging, not its operation. Some of the DSCC's tally program solicitations now include "disclaimer" language stating that the DSCC "does not accept earmarked contributions" and that the DSCC distributes tallied contributions "within its sole discretion." *See, e.g.*, Solicitation for "Take Back the Senate Dinner," Exhibit 5. The DSCC's actions, however, speak louder than these words. As demonstrated by the numerous attached documents, despite the "disclaimer" language the DSCC has continued to solicit and accept earmarked contributions through its tally program during the 1995-96 election cycle in violation of Section VI(2)(a) of the Agreement. In fact, the DSCC has violated the Conciliation Agreement by doing precisely what its "disclaimer" language says it will not do.

The DSCC has violated this term of Agreement by actively coordinating with the campaigns of its 1995-96 Democratic Senate candidates to prepare and distribute tally program solicitations clearly intended to solicit earmarked contributions from certain targeted donors, most of whom have already given the legal maximum to the candidates for whom they will "tally" funds. To illustrate, consider the tally solicitation letters sent by Senator Levin to contributors on October 9, 1995 and December 29, 1995. In the October 9th letter, Levin stresses to Chrysler's PAC that a tallied contribution "is crucial to my reelection effort next year." Exhibit 6. Likewise, in the December 29th letter, Levin follows a detailed description of his campaign's need for money by stating that he hopes the National Structured Settlements PAC "will be able to help me in a very specific way: would you be able to tally all or part of your 1996 DSCC contribution to me?" Exhibit 7. Without question, these solicit an earmarked contribution for the Levin campaign. The weak disclaimer language in these letters is irrelevant

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given that it does not in any way suggest that the contributor cannot earmark a contribution or that the DSCC exercises discretion over tallied funds.

Besides these written solicitations, the Levin "call sheets" demonstrate that the DSCC also encourages its tally participants to solicit aggressively earmarked contributions over the phone from major interest groups such as the United Steelworkers, the American Federation of State, County and Municipal Employees and the Kellogg Better Government Committee. See Exhibit 8. The instructions given to Senator Levin on these call sheets make it clear that the purpose of the calls was to solicit earmarked contributions. For example, Levin was informed on one call sheet that a contributor has "maxed out to your last campaign" and her husband has given to you as well", so "[a]sk them to . . . tally \$5,000 to your campaign." *Id.* Nothing in this or any of the other call sheets instructs or even suggests to Senator Levin that the donors called must be informed of the prohibition against earmarked contributions.

Senator Levin has not been alone in soliciting earmarked contributions for the DSCC Tally program. Substantial evidence shows that all of the Democratic Senate candidates have been soliciting earmarked contributions as part of the tally program during the 1995-96 election cycle. To illustrate, consider the January 31, 1996 fax sent by the Wellstone For Senate campaign to the United Transportation Union, an organization that had already donated the maximum amount to Wellstone's campaign. See Exhibit 17. In this fax, the Wellstone For Senate campaign specifically requests the UTU to earmark its substantial \$14,250 contribution to Wellstone by stating "that without something from the UTU the DSCC will hold-up crediting your check to Paul." *Id.*

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Because tally solicitations such as those described above ask for earmarked contributions, many of the contributors who have responded to these solicitations during the current cycle have earmarked their contributions to the DSCC on behalf of a particular candidate. An example is the June 21, 1996 letter sent to Senator Levin from a tally contributor. See Exhibit 9. In this letter, the contributor informs Levin that he donated \$1,500 "via" the DSCC tally "mechanism" so he "could be of some help" to Levin's campaign. *Id.* This same contributor even sent a second letter to Levin describing the \$1,500 contribution and wishing Levin "every success" in his campaign. Exhibit 10. The Tally Reports given to Senator Levin by the DSCC show that this contributor is not alone. See Exhibit 13. As of June 6, 1996, over 100 other contributors had earmarked contributions to Senator Levin through the DSCC's tally program, including Chrysler's PAC, the American Federation of State, County and Municipal Employees and others the documents show had received specific written or oral solicitations from Levin. *Id.* Moreover, given that the tally program's purpose is to circumvent federal contribution limits, it is not surprising that many of the contributors listed in these Tally Reports provided their earmarked contribution after, or at about the same time, they gave the maximum direct contribution to Senator Levin's campaign.

Section VI(2)(a) of the Agreement requires the DSCC to refund or forward all of these earmarked contributions received through the tally program. However, rather than doing so, the DSCC's own reports on file with the Commission show that the DSCC has knowingly and willfully continued to accept such earmarked contributions with the intent of funneling them back to the designated candidate at a later date in the form of coordinated expenditures. As if

this were not enough to prove that the DSCC has violated Section VI(2)(a) of Agreement during the 1995-95 election cycle, there can be no doubt after:

- DSCC Chairman Bob Kerrey's statement to Democratic Senate candidates in Colorado that "the money raised for the DSCC can be earmarked right back to the candidate" if he or she wins the primary. *Rocky Mountain News* Article, Exhibit 14; and
- Illinois Democratic Senate Candidate Dick Durbin's confession that "the only way the Democratic Senatorial Campaign Committee money goes to me is if I raise the money and it is tallied to me." *Associated Press Report*, Exhibit 19.

Thus, by the admission of its Chairman and one of its candidates, the DSCC has violated Section VI(2)(a) of the Conciliation Agreement. The truth of such admissions is confirmed by the DSCC "Tally Reports," which provide each Democratic Senate candidate with a detailed, side-by-side accounting of: (1) the total amount of coordinated expenditures allowed to be allocated to the candidate's campaign; (2) the total tally amount raised by the candidate to date; and (3) the total amount of coordinated expenditures allocated to the candidate's campaign to date. See, e.g., Levin Tally Reports, Exhibit 12.

**B. THE DSCC HAS VIOLATED SECTION VI(2)(b) OF THE CONCILIATION AGREEMENT BY FAILING TO EDUCATE AND TRAIN TALLY PARTICIPANTS CONCERNING EARMARKED CONTRIBUTIONS.**

Pursuant to Section VI(2)(b) of the Agreement, the DSCC voluntarily and expressly agreed to provide on-going "education and training to DSCC staff and participants in the tally program, including the staff of Democratic Senate candidates, which will emphasize that:

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(1) DSCC does not accept contributions earmarked for a particular candidate; (2) tallied contributions will be spent for DSCC activities and programs as the Committee determines within its sole discretion; and (3) contributors must be advised of (1) and (2) above when the DSCC and the tally program participants solicit tallied contributions." Conciliation Agreement, Exhibit 4.

If the DSCC has been complying with this requirement, its FEC reports and the reports of Democratic Senate candidates would show earmarked contributions and refunds of some contributions. They do not.

Moreover, if the DSCC has been complying with this requirement, its solicitations and other documents relating to the tally program would reflect a clear understanding of the rules governing earmarked contributions. However, a review of several documents indicates that the DSCC has failed to educate adequately or train adequately the Democratic Senate candidates that participate in the tally program or their staff:

- Neither the October 9th nor the December 29th solicitation letters sent by Senator Levin advises the contributor that the DSCC does not accept earmarked contributions or that the DSCC has sole discretion in distributing tallied contributions. *See* Exhibits 6 and 7;
- Nothing in any of the tally "call sheets" given to Senator Levin and his staff provide instructions to inform the contributor about the prohibition against earmarked contributions and that tallied contributions are dispersed by the DSCC within its sole discretion. *See* Exhibit 8;

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- The January 31, 1996 fax sent by the Wellstone For Senate campaign to the United Transportation Union specifically requests an earmarked contribution, indicating a clear lack of training to the campaign staff. *See* Exhibit 17;
- The DSCC's August 7, 1996 letter to Virginia candidate Mark Warner goes into great detail about the importance of raising money for the tally program, but fails to inform him about the prohibition against earmarked contributions or that tallied contributions are dispersed by the DSCC within its sole discretion. *See* Exhibit 18;
- The letter sent by DSCC Chairman Bob Kerrey to Colorado candidates not only fails to mention the rules prohibiting earmarked contributions, it includes the exact opposite message by telling candidates that "the money raised for the DSCC can be earmarked right back to the candidate." *See* Exhibit 14; and
- Illinois candidate Dick Durbin's statement that "the only way . . . [DSCC] money goes to me is if I raise the money and it is tallied to me" suggests that neither he nor his staff were adequately trained or educated regarding DSCC's ostensible policies.

This apparent failure of the DSCC to provide proper training to its tally participants during the 1995-96 election cycle violates Section VI(2)(b) of the Agreement.

**C. THE DSCC HAS VIOLATED SECTION VI(2)(c) OF THE CONCILIATION AGREEMENT BY FAILING TO INCORPORATE THE REQUIRED "STANDARD LANGUAGE" IN ITS TALLY SOLICITATIONS.**

Pursuant to Section VI(2)(c) of the Agreement, the DSCC voluntarily and expressly agreed to "utilize standard language" in its future solicitations pertaining to the tally program which states, at a minimum, "that the DSCC does not accept contributions earmarked for a

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particular candidate and that tallied contributions will be used as the DSCC determines in its sole discretion." See Conciliation Agreement, Exhibit 4. The DSCC also agreed to instruct all of the candidates and committees that participate in the tally program to include this standard language in any tally solicitations that they distribute. *Id.*

Although the DSCC has been including such "disclaimer" language in some of its tally solicitations, *see, e.g.*, Exhibit 5, the facts indicate that the DSCC has failed to instruct adequately its tally participants to include similar language in the solicitations that such participants prepare and distribute.

For instance, the tally solicitation letters sent by Senator Levin on October 9, 1995 and December 29, 1995 both contain the following language: "The DSCC maintains a record (a 'tally') of how much money each candidate helps to raise for the Committee. The amount of money to be spent by the DSCC on my behalf is based in part on my tally, among other factors, like my likelihood of winning and my need for DSCC funds." *See* Exhibits 6 and 7. This is hardly the minimum "standard language" required by Section VI(2)(c) since it fails to inform the contributor that the DSCC "does not accept" earmarked contributions or that the DSCC distributes tallied funds "within its sole discretion." Of course, the inclusion of such language would run counter to the basic message that the funds are for Senator Levin's benefit.

Based on solicitation letters such as these, it appears that the DSCC has violated Section VI(2)(c) of the Agreement by failing to instruct its tally participants to include the required language in their tally solicitations.

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**D. THE DSCC HAS VIOLATED SECTION VI(2)(d) OF THE CONCILIATION AGREEMENT BY FAILING TO REVIEW ADEQUATELY THE SOLICITATIONS OF DEMOCRATIC SENATE CANDIDATES.**

Pursuant to Section VI(2)(d) of the Agreement, the DSCC voluntarily and expressly agreed to "implement reasonable procedures to review DSCC and Democratic Senate candidate fundraising solicitations pertaining to the tally program to ensure that the solicitations cannot be reasonably read to solicit earmarked contributions." See Conciliation Agreement, Exhibit 4.

The tally solicitation letters sent by Senator Levin on October 9 and December 29 of 1995 demonstrate that the DSCC has failed to implement such procedures, thereby violating this term of the Agreement. See Exhibits 6 and 7. In the October 9th letter, Senator Levin stresses to the potential donor that a tallied contribution "is crucial to my reelection effort next year." Exhibit 6. Likewise, in the December 29th letter, Levin follows a detailed description of his campaign's need for money by stating that he hopes the contributor "will be able to help me in a very specific way: would you be able to tally all or part of your 1996 DSCC contribution to me?" Exhibit 7.

Thus, both of these letters solicit an earmarked contribution for the Levin campaign in violation of Section VI(2)(d). The weak disclaimer language fails by not stating that the DSCC will not accept earmarked contributions or that the DSCC will have sole discretion in distributing tallied contributions. Of course, the inclusion of such language would run counter to the solicitation's basic message that the funds are of Senator Levin's benefit.

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**II. THE COMMISSION MUST IMMEDIATELY INITIATE A CIVIL ACTION AGAINST THE DSCC FOR VIOLATING THE CONCILIATION AGREEMENT.**

The DSCC has knowingly and willfully violated the letter and spirit of the Conciliation Agreement through its tally program during the 1995-96 election cycle. The Commission must immediately institute a civil action for relief in the United States District Court for the District of Columbia as required under 2 U.S.C. §§ 437g(a)(5)(D), 437g(a)(6) and Section VII of the Conciliation Agreement.

In this civil action against the DSCC, it is necessary for the Commission to seek: (1) a temporary and permanent injunction to prevent the DSCC from continuing its illegal tally activities for the remainder of the 1995-96 election cycle<sup>21</sup>; (2) a temporary and permanent injunction to prevent the DSCC from forwarding any of the illegal earmarked contributions obtained thus far through the tally program to any of the Democratic Senate candidates in the form of coordinated expenditures or direct contributions<sup>22</sup>; and (3) a civil penalty equal to 200 percent of the total amount of contributions involved in the DSCC 1995-96 illegal tally program activities.<sup>23</sup> Without such relief, the integrity and fairness of the rapidly approaching 1996 U.S. Senate elections will be irreparably damaged.

Given the imminency of the 1996 U.S. Senate elections and the potential for the DSCC's tally program activities to irreparably damage the integrity and fairness of such elections, it is

<sup>21</sup> See 2 U.S.C. § 437g(a)(6)(A).

<sup>22</sup> *Id.*


<sup>23</sup> In cases involving the knowing and willful violation of the Act or a Conciliation Agreement, 2 U.S.C. § 437g(a)(6)(C) allows the court to impose a civil penalty not exceeding \$10,000 or an amount equal to 200 percent of any contribution or expenditure involved in such violation.

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imperative that the Committee initiate a civil action seeking the requested relief during its next Executive Session scheduled for October 1, 1996.

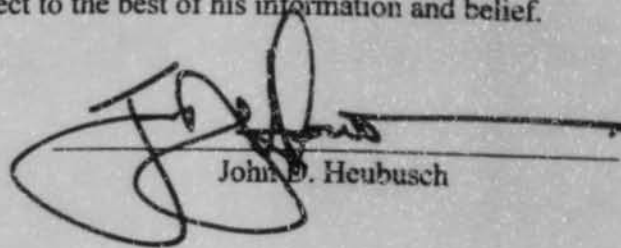
**CONCLUSION**

For the reasons set forth above, the Federal Election Commission must initiate a civil action against the DSCC seeking the appropriate injunctive relief to prevent the DSCC's actions from influencing the 1996 U.S. Senate elections.

  
John D. Heubusch  
Executive Director  
National Republican Senatorial Committee

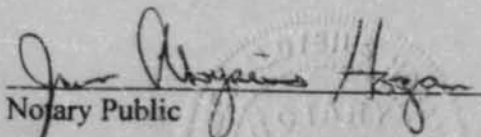
**VERIFICATION**

The undersigned swears that the statements in the Motion are based on the sources indicated, and, as such, are true and correct to the best of his information and belief.

  
John D. Heubusch

District of Columbia      )  
  ) ss

Subscribed and sworn to before  
me this 26<sup>th</sup> day of September, 1996

  
Notary Public

My Commission Expires Nov. 30, 2000

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National Republican Senatorial Committee

EXHIBIT 1

NATIONAL REPUBLICAN SENATORIAL COMMITTEE  
CHAIRMAN

JES HENSARLING  
EXECUTIVE DIRECTOR

September 24, 1992

Mrs. Joan Aikens  
Chairman  
Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20463

MUR 3620

Dear Madam Chairman:

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RECEIVED  
FEDERAL ELECTION COMMISSION  
92 SEP 24 AM 10:30

This letter constitutes a formal complaint filed under 2 U.S.C. 437g(a) of the Federal Election Campaign Act ("FECA") on behalf of the National Republican Senatorial Committee (the "NRSC"). It is the NRSC's belief, based on information set out below, that the Yeakel for Senate Committee (the "Yeakel Campaign"), the Feinstein for Senate Committee (the "Feinstein Campaign"), the Terry Sanford for U.S. Senate Committee (the "Sanford Campaign") and the Democratic Senatorial Campaign Committee (the "DSCC"), political committees registered with the Federal Election Commission ("the Commission"), have violated FECA and the Commission's regulations.

As the Commission well knows, under the law, all personal contributions that are "earmarked" for a particular candidate are deemed contributions from the contributor to the candidate. 11 C.F.R. 110.6(a). This precludes both the candidate and the contributor from evading the limits FECA imposes on the amount any person may contribute to a federal campaign. Based upon the evidence set out below, the NRSC believes that the Yeakel Campaign, the Feinstein Campaign, the Sanford Campaign and the DSCC have violated these legal provisions.

The DSCC has repeatedly and openly solicited contributions from persons who wish to avoid federal limitations. The Yeakel Campaign, the Feinstein Campaign and the Sanford Campaign have obviously sought to take advantage of the DSCC's solicitations:

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1. In the invitation attached at Exhibit 1, the DSCC announced that its "U.S. Senate Campaign Countdown" is "designed for a senate campaign's maxed-out donors and top contributors who are interested in further supporting their candidates through the DSCC's tally system. The DSCC provides donors with the opportunity to tally contributions to the Democratic Senate nominees of their choice." The invitation included a form by which the contributors could "tally" an explicit amount to candidates of their choice.

2. In the memorandum attached at Exhibit 2, the DSCC defined its "tally" option as ensuring that individuals could earmark large contributions to particular candidates and thus evade federal limitations.

3. In the memorandum attached at Exhibit 3, the DSCC encouraged all Senate staff and campaign finance directors "to encourage maxed-out and high dollar contributors to tally \$10,000 or more (per couple) in new money to their preferred Democratic Senate candidate(s)."

4. In the document attached at Exhibit 4, Senate candidate Dianne Feinstein, acting on the encouragement of the DSCC, asked her contributors to evade federal limitations through "the DSCC tally."

5. In the document attached at Exhibit 5, Senate candidate Terry Sanford, also encouraged by the DSCC, asked his contributors to evade federal limits through the "tally sheet."

6. In the invitation attached at Exhibit 6, Norman Braman asks contributors to honor "Lynn Yeakel, Candidate for United States Senate," with a \$5,000 contribution made payable to the DSCC.

These documents show that the Yeakel Campaign, the Feinstein Campaign, and the Sanford Campaign are engaging in a common scheme or design to circumvent and violate federal law when it comes to raising campaign contributions. The Yeakel Campaign's current active solicitation of large contributions and the DSCC's plan to target "maxed-out" donors, combined with the DSCC's pledge to "tally" contributions to favored candidates and the DSCC's long-standing promise to make a Yeakel victory a national priority, virtually ensure that the DSCC intends to continue its scheme and to "honor" Lynn Yeakel by "tallying" contributions raised at the upcoming Braman fundraiser.

The NRSC believes that this attempt to launder contributions and evade the law must be condemned. Accordingly, I ask that the Commission's Office of General Counsel expeditiously review this complaint and take appropriate action with regard to these apparent violations of the FECA.

The above is true and correct to the best of my knowledge, information and belief.

Respectfully,

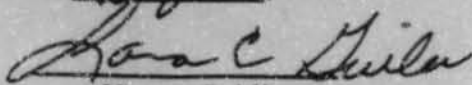


Jay Velasquez  
on behalf of the  
National Republican Senatorial Committee

National Republican Senatorial Committee

Sworn to and subscribed

before me this 24 day  
of Sept, 1992

  
Notary Public

Rene C. Heller -  
Notary Public, District of Columbia  
My Commission Expires July 14, 1997

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## PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
 1017 FIFTEENTH STREET, N.W. • WASHINGTON, D.C. 20004-2111  
 (202) 624-0000 • FACSIMILE: (202) 454-1000

August 17, 1994

RECEIVED  
 FEDERAL ELECTION COMMISSION  
 AUG 18 12 27 PM '94

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

Re: MUR 4010

Dear Mr. Noble:

The Democratic Senatorial Campaign Committee ("DSCC") seeks by this letter immediate dismissal of the complaint filed by the National Republican Senatorial Committee ("NRSC") on July 18, 1994. That complaint alleges in "Count II" that DSCC in collaboration of Respondents, Dianne Feinstein and her principal campaign committee, The Feinstein for Senate, have violated or "are about to violate" the Act by engaging in prohibited "earmarking."

The NRSC in this case and in others still pending has rehearsed these same allegations before. That Committee typically identifies some representation in fundraising materials, then mischaracterizes those representations or their legal significance; and when is all done, fashions out of these misrepresentations a supposed "earmarking" case. But the NRSC, having missed the mark before in these matters, misses it yet again on this occasion.

#### TALLY PROGRAM

DSCC has stated before in responding to MURs 3617, 3620, 3653 and 3658 and repeats here the essential background about the tally program not mentioned by NRSC.

\* NRSC also alleges that a letter prepared by a DSCC supporter hosting an event in her home omitted the "disclaimer" required under 2 U.S.C. § 441d. That section applies, however, to "general public political advertising," whereas the letter in question was a personal invitation to "a small group of women" to attend an in-home fundraising event.

[04005-0048/DA942290.030]

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Lawrence Noble, Esq.  
August 17, 1994  
Page 2

The Tally Sheet is an informal accounting process established by the DSCC to keep track of the amount of money raised for the Committee's use by a particular candidate. The program is simply and exclusively an information gathering procedure. Each contribution raised for the DSCC by a candidate is "tallied" or credited to that candidate's "tally sheet." The total amount of money raised by a particular candidate for the Committee is then taken into consideration as one of several factors used by the DSCC when it decides on funding decisions under the spending authority provided at 2 U.S.C. § 441a(d).

DSCC has an express policy of not accepting earmarked contributions. When a contribution is received by the DSCC with a designation by a contributor which would appear to constitute earmarking, a letter is sent to clarify the contributor's intent. Sample copies of this letter have been provided to the Commission in connection with its response to MURs 3617, 3620, 3653 and 3658. As the letter shows, the DSCC offers the opportunity of a refund to each contributor who did not intend to "tally" to a particular candidate.

All tallied contributions (and all other contributions) are placed into the general DSCC bank accounts and used entirely at the DSCC's discretion. The funds tallied to a particular candidate are not "passed through" the DSCC to the candidate who helped raise the funds. Nor are the funds spent on a dollar-for-dollar exchange for the amounts raised by a candidate. When funds are deposited in the DSCC's account, they are used for the Committee's most pressing expenses first. This may be, for example, administrative expenses of the DSCC, or Section 441a(d) spending on behalf of another candidate. There are examples of a candidate who raised large amounts of money for the DSCC (such as the case of a barely challenged incumbent), but received little or no Section 441a(d) funding in return. Similarly, there are candidates who have raised little or no money for the Committee, but received full funding under the relevant contribution and expenditure limitations available to the DSCC.

The DSCC has never raised sufficient funds to "max out" under the coordinated party spending limits to each of its party's Senate nominees in any election cycle. Because of this, the Committee has had to ensure that the monies the party did have available were used to the maximum effect. To this end, in determining which candidates will receive funding

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under Section 441a(d) and to what extent, the DSCC looks to a variety of factors:

- Whether the race is winnable;
- Whether the candidate has a serious challenger;
- Whether the candidate has been successful in his or her own campaign's fundraising;
- Whether the candidate has assisted the DSCC in its fundraising efforts;
- Whether the DSCC has more pressing expenditures that must be made.

These criteria have been provided and emphasized repeatedly, orally and in writing, to DSCC contributors and Democratic candidates. The significance of the tally, in short, is its role as an incentive to its candidates to support its fundraising efforts. The Committee operates under the direction of Democratic United States Senators and candidates for the benefit of all Democratic Senate candidates, both incumbent and challenger. As the Committee has no independent funding source, it must draw on their efforts to raise the monies required to perform its functions.

An earmarked contribution is one which is made with:

a designation, instruction or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of a clearly identified candidate or a candidate's authorized committee.

11 C.F.R. § 110.6(b)(2) (emphasis added). None of the contributions received by the DSCC and tallied to a particular candidate can be considered earmarked, since such tallied contributions do not result in the funds being spent on behalf of a particular candidate designated by the contributor, nor are contributors allowed to so condition these contributions.

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REPRESENTATIONS IN NRSC COMPLAINT

NRSC constructs its tally case out of a letter proposed by Ms. Lynn Cutler who by that letter was inviting potential contributors to an event in her home for the Women's Council of the DSCC. The Women's Council is a project of DSCC, dedicated to the support of women seeking election to the U.S. Senate as Democrats. In her letter, Ms. Cutler encouraged recipients of the letter to contribute to DSCC's Women Council and "tally" their contributions to Ms. Feinstein. NRSC cites, particular, Ms. Cutler's statement that contributions tallied in this way "will go to [Senator Feinstein's] effort."

Ms. Cutler has acknowledged that her representations were not authorized by the DSCC. Also, she is not a donor. At most NRSC might be expressing "concern" that the wording of this letter would encourage donors to believe that a "tally" was an "earmarking" instruction or to "earmark" their contributions.

There is no evidence that such is the case. Any inaccuracy in the wording of this letter, by someone admittedly acting without authorization of the DSCC, cannot bind the DSCC or influence its liability or the liability of any other donors under the Act. DSCC has made available to donors and to the Commission a precise explanation of "tally" and it acts promptly to correct any misunderstanding about "tally." DSCC does not accept earmark contributions and any contributions so earmarked are immediately returned to the contributor. At all times DSCC maintains full control over the funds that it raises and discretion in the expenditure of those monies.

GENERAL LEGAL CONSIDERATIONS

As we noted, the Commission has once before, 17 years ago, addressed directly the line of demarcation between "earmarking" and party fundraising under section 441a(d) which focuses appeals on the candidates who will benefit from strong party funding and also enlists those candidates in fundraising efforts. In MUR 377, the Commission concluded that a rulemaking would be required to clarify the issues and develop the appropriate legal standards distinguishing the permissible from the impermissible. The Commission has taken no action since then.

The standard remains, therefore, unelaborated and, for all practical purposes, unavailable to organizations such as DSCC. Yet DSCC depends vitally as a party organization on its known relationship to and support for candidates affiliated with the same political party.

In these circumstances, Courts have ruled that, in enforcing its governing statute, a federal agency must proceed in accordance with "ascertainable standards." See Pension Benefit Guaranty Corp. v. LTV Corp., 875 F.2d 1008, 1021 (2d Cir. 1987); Patachogue Nursing Center v. Bowen, 797 F.2d 1137, 1143 (2d Cir. 1986); Holmes v. New York City Housing Authority, 398 F.2d 262, 265 (2d Cir. 1968), cert. denied, 479 U.S. 1030 (1987); Baker-Chaput v. Cammett, 406 F.Supp. 1134, 1140 (D.N.H. 1976) ("The establishment of written, objective and ascertainable standards is an elementary and intrinsic part of due process.")

While a federal agency may establish such standards through adjudicatory proceeding or rulemaking, it may not act with uncontrolled discretion and absent an ascertainable standard by which parties are put on notice. See generally, Matlovich v. Secretary of the Air Force, 591 F.2d 852, 861 (D.C. Cir. 1978). Although courts have not dictated the use of one method over another, the advantages of rulemaking have been recognized. See e.g., Id. at 861; Standard Rate and Data Service, Inc. v. United States Postal Service, 584 F.2d 473 (D.C. Cir. 1978) ("...rulemaking assures that any modification in position will represent a generalized approach to a general problem, avoiding the uneasiness that results from the greater possibility of discrimination in a case-by case approach"...)(Leventhal, J., concurring).

The Commission has nonetheless addressed two cases bearing on the issues in this case. In MUR 2632, the Commission addressed the issue of earmarked contributions through a state party committee. This case is distinguishable from the matter before the Commission here, inasmuch as the Commission found in that case a clear designation of the funds by the contributor (despite denials of the contributor) and the apparent use of the funds, in fact, to benefit the designated candidate. Moreover, in MUR 2632, unlike this case, a condition of "earmarking" -- that the designation "results in" the contribution being spent in full to benefit the designated candidate -- appears to have been satisfied.

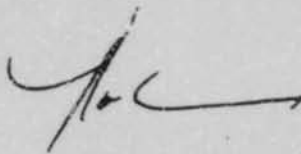
Lawrence Noble, Esq.  
August 17, 1994  
Page 6

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In a recent case, pre-MUR 261 (1994), the Commission considered a recommendation of the Office of General Counsel in the matter of a contribution made from surplus funds from the former Governor of Florida, Bob Martinez, to the Republican Party of Florida. Mr. Martinez forwarded the contribution to the Party with the stated "hope" that it would be used to support the Bush-Quayle Republican Presidential ticket. The General Counsel concluded that this statement bound the Party in the receipt of the funds, indicating that it was "earmarked for federal activity." See, First General Counsel's Report, at 7 (June 17, 1994). As a result, the party could not accept the contribution for the federal account (the amount far exceeding any limit available under the Act), or for the nonfederal account since the Martinez statement would preclude any use for nonfederal purposes. The Commission, however, rejected the OGC's recommendations by a vote of 5-0.

The Commission did not explain its rationale, but it should be apparent that the Martinez case presents "earmarking" elements not at all present in these DSCC matters. First Martinez (or his committee) was the donor, so unlike the case here, the statement made was the donor's and the donor's intent was squarely at issue. Second, the donor did make a statement, a clear one, of preference that the contribution be used for federal election related purposes. Third, the party received the contribution and apparently took no action to clarify the use it expected to make of the contribution.

So to the extent that pre-MUR 261 speaks at all to the issues in this case, it supports a dismissal of the claims made by NRSC against DSCC.



Robert F. Bauer  
B. Holly Schadler  
Counsel to Democratic  
Senatorial Campaign  
Committee



## BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
Feinstein for Senate Committee and	)	MUR 3617
Michael J. Barrett, as treasurer.	)	
Feinstein for Senate Committee and	)	
Michael J. Barrett, as treasurer;	)	MUR 3620
Democratic Senatorial Campaign	)	
Committee and Donald J. Foley, as	)	
treasurer;	)	
Yeakel for Senate Committee and	)	
Sidney D. Rosenblatt, as treasurer;	)	
Sanford for Senate Committee and	)	
Alton G. Buck, as treasurer.	)	
Abrams Committee, f/k/a Abrams	)	
'92 Committee and Lawrence B.	)	MUR 3658
Buttenwieser, as treasurer.	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on October 4, 1994, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions with respect to MURS 3617, 3620, and 3658:

- A. MUR 3617: Merge this matter into MUR 3620, and hereafter refer to this matter as MUR 3620.
- B. MUR 3658: Merge this matter into MUR 3620, and hereafter refer to this matter as MUR 3620.

(continued)

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C. MUR 3620:

1. Find reason to believe that the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, violated 2 U.S.C. § 441a(a)(8) 11 C.F.R. § 110.6 (c)(1); 11 C.F.R. § 110.6(b)(2) (iii) and 11 C.F.R. § 102.8.
2. Find reason to believe that the Feinstein for Senate Committee and Michael J. Barrett, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6 (c)(2).
3. Find reason to believe that the Sanford for Senate Committee and Alton G. Buck, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2).
4. Find reason to believe that the Abrams Committee, f/k/a Abrams '92 Committee, and Lawrence B. Bittenwieser, as treasurer, violated 2 U.S.C. 441a(f) and 11 C.F.R. § 110.6(c)(2).
5. Find no reason to believe, based on the allegations of the complaint, that the Yeakel for Senate Committee and Sidney D. Rosenblatt, as treasurer, violated 2 U.S.C. § 441a(f) or any other applicable section of the Act and close the file as to these Respondents.

(continued)

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6. Open a MUR and find reason to believe that the Coverdell for Senate Committee and Marvin Smith, as treasurer, violated 11 C.F.R. § 110.6(c)(2).
7. Approve appropriate letters pursuant to the actions taken in these matters and the Commission discussion.
8. Approve the Factual and Legal Analyses attached to the General Counsel's September 19, 1994 report subject to the revisions agreed upon during the meeting discussion.
9. Approve the Subpoenas for the Production of Documents and Answers to Interrogatories to the Democratic Senatorial Campaign Committee, the Feinstein for Senate Committee, the Sanford for Senate Committee, the Abrams Committee, f/k/a Abrams '92 Committee, and the Coverdell for Senate Committee, as recommended in the General Counsel's September 19, 1994 report

Commissioners Aikens, McDonald, McGarry, Potter and Thomas voted affirmatively for the decision; Commissioner Elliott was not present.

Attest:

10-5-94  
Date

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

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## BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Democratic Senatorial  
Campaign Committee and  
Donald J. Foley, as  
treasurerAbrams Committee, f/k/a  
Abrams '92 and Lawrence B.  
Buttenwieser, as treasurer  
Feinstein for Senate '94 and  
Michael J. Barrett, as  
treasurer  
Sanford for Senate  
Committee and Alton G.  
Buck, as treasurer

MUR 3620

Aug 16 11 44 AM '95

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

## CONCILIATION AGREEMENT

This matter was initiated by signed, sworn, and notarized complaints by the National Republican Senatorial Committee and the John Seymour for U.S. Senate Committee. The Federal Election Commission ("Commission") found reason to believe the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, ("DSCC" or "Respondents") violated 2 U.S.C. § 441a(a)(8); 11 C.F.R. § 102.8; 11 C.F.R. § 110.6(b)(2)(iii); and 11 C.F.R. § 110.6(c)(1). The Commission also found reason to believe that the Abrams Committee, f/k/a Abrams '92, and Lawrence B. Buttenwieser, as treasurer; Feinstein for Senate '94, and Michael J. Barrett, as treasurer; and Sanford for Senate Committee, and Alton G. Buck, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2).

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NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

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. The Democratic Senatorial Campaign Committee is a national committee within the meaning of 2 U.S.C. § 431(14).

2. Donald J. Foley is treasurer of the Democratic Senatorial Campaign Committee.

3. A contribution made by a person, either directly or indirectly, on behalf of a particular candidate, which is in any way earmarked or otherwise directed through an intermediary or conduit, shall be treated as a contribution from such person to such candidate. 2 U.S.C. § 441a(a)(8).

4. Earmarked is defined as a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.

11 C.F.R. § 110.6(b)(1).

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5. A conduit or intermediary means any person (except for a few limited exceptions not applicable to this matter) who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee. 11 C.F.R. § 110.6(b)(2).

6. 11 C.F.R. § 110.6(b)(2)(iii) provides that any person who receives an earmarked contribution shall, among other requirements, forward such earmarked contribution to the candidate or authorized committee in accordance with 11 C.F.R. § 102.8.

7. Section 102.8 provides, inter alia, that earmarked contributions must be forwarded no later than 10 days after receipt.

8. Pursuant to 2 U.S.C. § 441a(a)(8), the intermediary or conduit of an earmarked contribution must report the source of the contribution and the intended recipient to the Federal Election Commission and to the intended recipient. See also, 11 C.F.R. § 110.6(c)(1).

9. Recipient candidates or candidate committees must report earmarked contributions and each conduit or intermediary, who forwards one or more earmarked contributions which in the aggregate exceed \$200 in any calendar year in accordance with 11 C.F.R. § 110.6(c)(2).

10. The national committee of a political party may make expenditures in connection with the general election campaign of a candidate for the office of Senator or of a Representative from a state which is entitled to only one Representative that equals the greater of two cents multiplied by the voting age population of the state, or \$20,000. 2 U.S.C. § 441a(d); 11 C.F.R. § 110.7(b).

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11. The Federal Election Campaign Act of 1971, as amended, (the "Act") does not prohibit party committees from referring to and promoting party candidates in soliciting funds for the committee and candidates may assist party committees in soliciting funds for the committee.

12. The DSCC has utilized and utilizes a "tally" program as a means of raising funds on behalf of Democratic senate candidates. Tallied funds are used in part to fund coordinated party expenditures pursuant to 2 U.S.C. § 441a(d) as well as other DSCC activities on behalf of its candidates.

13. Under this program a contributor has the option to "tally" a contribution to the DSCC in the name of a particular candidate, thereby expressing support for that candidate or crediting the candidate with the raising of the contribution for the DSCC's "coordinated expenditure" program and other activities.

14. As part of the tally program, the DSCC and the candidate committees produced and distributed fundraising solicitations requesting contributions be sent to the DSCC and indicating that the contributors can tally their contributions to a specific candidate.

15. Some of these solicitations can be fairly read to solicit earmarked contributions and did not contain further clarification and explanation to avoid such a reading; the following examples are illustrative:

a. "For those of you who have already maxed out to my campaign, the DSCC tally is an avenue through which you can offer more support";

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b. "[My] race will be close: the tally sheet will be of vital importance";

c. "As an individual, you can contribute up to \$1,000 directly to my committee. Contributions in excess of \$1,000 must be made payable to the DSCC and marked for my tally";

d. "You can tally your [DSCC] membership to [\_\_]'s campaign. This means that those dollars will go to [\_\_]'s effort";

e. The response card to a request from a candidate's committee to serve on the host committee for a fundraiser on behalf of the candidate, which provided no explanation of the DSCC's tally program, read as follows:

Please reserve a space in my name on the invitation as a Benefactor -- enclosed is my check for \$5,000 (payable to the "Democratic Senatorial Campaign Committee" marked for [\_\_]'s tally) or I pledge to raise \$5,000. Patron -- enclosed is my check for \$2,500 (payable to the "Democratic Senatorial Campaign Committee" marked for [\_\_]'s tally) or I pledge to raise \$2,500. Sponsor -- enclosed is my check for \$1,000 (payable to "[\_\_] for Senate") or I pledge to raise \$1,000;

f. "I must raise an additional \$4 million dollars over the next few weeks. . . . I am counting on you to help me pull it off. If you and [\_\_] have any room to make additional federal contributions, I would be grateful if you could tally money to the DSCC for this effort to defeat [my opponent]";

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g. "If you could make a \$2,000 contribution to [my committee] and a \$10,000 contribution to the DSCC for this effort to defeat [my opponent], it would be one of the building blocks of my campaign";

h. "If you choose to contribute through the DSCC, it is very important that you enclose a letter with your contribution indicating that it is meant for [my tally]. I hope you will consider this as our campaign really needs the support".

16. It was the DSCC's stated policy and practice to inform contributors that the DSCC did not accept earmarked contributions, that the amount of tallied contributions was a significant factor that the DSCC took into account in deciding the amount of 441a(d) expenditures to be made on behalf of a particular candidate, and that the DSCC retained final discretion regarding the use of any tallied contribution. The DSCC acknowledges that this information was not always conveyed to contributors.

17. Some percentage of contributors who responded to these "tally" solicitations earmarked their contributions to the DSCC on behalf of a particular candidate.

18. During the 1992 cycle, the DSCC raised approximately \$8,500,000 in tallied funds. During the 1994 cycle, the DSCC raised approximately \$11,000,000 in tallied funds. The Commission is not taking the position that all tallied contributions were earmarked, but, without conducting a full investigation, the percentage of contributors who intended that their tallied contributions be earmarked cannot be determined.

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19. The Commission acknowledges that the DSCC may not have intended to solicit earmarked contributions.

20. The tallied contributions that were earmarked for a designated candidate were not treated as earmarked by the DSCC, viz. forwarded to the recipient candidate committees within 10 days, reported as earmarked by the conduit and recipient, and applied to each contributor's limit to the candidate committee's campaign.

V. Because the parties desire an expeditious resolution of this matter, the parties enter into this conciliation agreement prior to the Commission completing its investigation. The parties agree that --

1. The DSCC and certain of its candidates prepared and distributed fundraising solicitations for the DSCC's tally program which can be fairly and reasonably read to mean that contributions would be earmarked for a particular candidate within the meaning of 2 U.S.C. § 441a(a)(8). In response to these solicitations, some contributors earmarked their contributions to the DSCC for a particular candidate.

2. Consistent with its stated policy and practice of not accepting earmarked contributions, the DSCC did not treat such tallied contributions as being earmarked for the designated candidate. When a contribution has been earmarked by a contributor for a particular candidate, a political committee receiving the contribution must follow the requirements of the Act, which the DSCC did not do in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 102.8, 110.6(b)(2)(iii) and

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110.6(c)(1). Some of the funds received by the candidate committees as coordinated party expenditures from the DSCC were earmarked contributions which the DSCC, inter alia, failed to report as earmarked contributions and the candidate committees, in turn, did not report as earmarked contributions, in violation of 11 C.F.R. § 110.6(c)(2).

3. The parties agree that the solicitations could have been clarified to avoid soliciting earmarked contributions by additional DSCC efforts to assure that its staff and the candidate committees had a better understanding of the tally program and communicated this understanding more effectively to donors when soliciting for the DSCC's tally program.

VI. 1. DSCC will pay a civil penalty to the Commission in the amount of seventy-five thousand dollars (\$75,000), pursuant to 2 U.S.C. § 437g(a)(5)(A); such penalty to be paid as follows:

a. An initial payment of \$25,000 due within 30 days after the effective date of this conciliation agreement.

b. Thereafter, two consecutive monthly installment payments of \$25,000 each, due 60 and 90 days after the effective date of this conciliation agreement.

c. In the event that any installment payment is not received by the Commission by the fifth day after it becomes due, the Commission may, at its discretion, accelerate the remaining payments and cause the entire amount to become due upon ten days written notice to the DSCC. Failure by the Commission to

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accelerate the payments with regard to any overdue installment shall not be construed as a waiver of its right to do so with regard to future overdue installments.

2. The DSCC agrees to implement the following remedial steps.

a. For contributions to the DSCC that appear to be earmarked, the DSCC will refund the contributions or forward the contributions to the designated candidate, in accordance with 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 102.8, 110.6(b)(2)(iii), and 110.6(c)(1).

b. On an on-going basis, the DSCC will provide additional education and training to DSCC staff and participants in the tally program, including the staff of Democratic senate candidates, which will emphasize that: (1) DSCC does not accept contributions earmarked for a particular candidate; (2) tallied contributions will be spent for DSCC activities and programs as the Committee determines within its sole discretion; and (3) contributors must be advised of (1) and (2) above when the DSCC and tally program participants solicit tallied contributions.

c. The DSCC will utilize standard language in its solicitations pertaining to the tally program and, as part of its education and training, will instruct its tally participants to include this language in solicitations distributed by such candidates, their committees and their agents. This language will provide, in substance, that the DSCC does not accept contributions earmarked for a particular candidate and that tallied

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contributions will be used as the DSCC determines in its sole discretion. At a minimum, the language will state that:

The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

d. The DSCC will implement reasonable procedures to review DSCC and Democratic Senate candidate fundraising solicitations pertaining to the tally program to ensure that the solicitations cannot be reasonably read to solicit earmarked contributions, in accordance with the requirements of Section VI(2)(b)-(c) of this agreement.

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. Except as provided in Section VI, paragraph (1)(b)-(c), Respondents shall have no more than 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.

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X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no 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 (LQ)  
Lawrence M. Noble  
General Counsel

8-21-95  
Date

FOR THE RESPONDENTS:

Robert F. Bauer  
Robert F. Bauer  
Counsel to Democratic  
Senatorial Campaign Committee

8-11-95  
Date

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THE TRAIL TO THE MAJORITY BEGAN IN OREGON

*Please join*

Senator Thomas A. Daschle  
DEMOCRATIC LEADER

Senator J. Robert Kerry  
CHAIRMAN, THE DEMOCRATIC  
SENATORIAL CAMPAIGN COMMITTEE

*and*

The Democratic Members of  
the United States Senate

*for the*

TAKE BACK THE SENATE DINNER

WEDNESDAY, MARCH 6, 1996  
EAST HALL - UNION STATION  
WASHINGTON, DC

*Reception 6:00 pm  
Dinner 7:30 pm*

BUSINESS ATTIRE  
REPLY CARD ENCLOSED  
PLEASE RSVP AT (202) 224-2447





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The Hon. Jesse Brown  
The Hon. Ron Brown  
The Hon. Carol Browner  
The Hon. Henry Cisneros

The Hon. Dan Glickman  
The Hon. Mickey Kantor  
The Hon. Hazel O'Leary  
The Hon. Leon Panetta  
The Hon. Federico Pena

The Hon. Robert Reich  
The Hon. Richard Riley  
The Hon. Alice Rivlin  
The Hon. Robert Rubin  
The Hon. Donna Shalala

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International Brotherhood  
of Electrical Workers  
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American Nurses  
Association  
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## HOSTS

Amalgamated  
Transit Union  
American Association  
of Nurse Anesthetists  
Arnold & Porter  
Robert Glennon  
Tom Greene

G. David Hurd  
Independent Bankers  
Association  
The Principal  
Financial Group  
Phoenix Home  
Mutual Life

Entergy PAC  
David Rubaskin  
John Rector  
William R. Sweeney, Jr.  
Textron Inc.  
Robert M. Tobias  
Carl Tuvin

COMMITTEE IN FORMATION

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- ☐ Yes, I will attend the March 6 Dinner (\$5,000 Contribution). Amount \$
- ☐ No, I am unable to attend, but enclosed is my Contribution of \$

NAME OF PAC

ADDRESS

CITY

WASHINGTON REPRESENTATIVE OF THE PAC OR SPONSORING GROUP

PERSON(S) ATTENDING THE DINNER

TREASURER OF PAC

CHECK SIGNED BY

TALLY TO SENATOR

CONTRIBUTIONS THROUGH THE EFFORTS OF

TICKETS USED IN THE NAME OF

RESERVE

Contributions are not tax deductible. Paid for and authorized by the Democratic Senatorial Campaign Committee, Donald J. Foley, Treasurer, 430 South Capitol Street, SE, Washington, DC 20003, (202) 224-2447

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# INDIVIDUAL CONTRIBUTION

Please make checks payable to the Democratic Senatorial Campaign Committee.  
If you prefer to pay by credit card, please complete the following information:

☐ VISA ☐ MASTERCARD

NUMBER

EXP. DATE

Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year.

NAME

ADDRESS

CITY

STATE

ZIP

PHONE

BUSINESS PHONE

TITLE OR POSITION

☐ SELF EMPLOYED

EMPLOYER (OR FIRM)

BUSINESS ADDRESS

CITY

STATE

ZIP

PLEASE TALLY MY CONTRIBUTION TO:

CONTRIBUTION THROUGH THE EFFORTS OF:

TICKETS UNDER THE NAME:

RESERVE:

For seating purposes, contributions should be received no later than March 1. Payment prior to the Dinner is required. Contributions are not tax deductible.



- The Democratic Senatorial Campaign Committee (DSCC) is a national party committee formed by the Democratic members of the U.S. Senate to help raise funds to provide campaign services for Democratic U.S. Senate incumbents and candidates throughout the country.
- Under federal law, the DSCC may contribute up to \$17,500 per election cycle to candidates for the U.S. Senate. In addition, the DSCC may make expenditures in connection with the general election campaigns of Democratic nominees for the U.S. Senate. The amount the DSCC may spend on behalf of a nominee is based on the voting age population of that nominee's home state. The DSCC raises funds in a variety of ways - through DSCC donor programs, the Next Majority Trust, Leadership Circle, DSCC Roundtable and Women's Council; and through special events and national fundraising activities.
- The DSCC can accept donations from individuals up to \$20,000 per calendar year (not to exceed the total \$25,000 yearly federal limit for an individual) and from PAC's up to \$15,000 per calendar year.
- The DSCC maintains a record (a "Tally") of how much money each candidate helps raise for the Committee. The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.
- Paid for and authorized by the Democratic Senatorial Campaign Committee, Donald J. Foley, Treasurer. Contributions are not tax deductible.

*Senator Carl Levin*

October 9, 1995

Ms. Lisa Learner Maher  
Chrysler Corporation Nonpartisan PAC  
1100 Connecticut Avenue N.W.  
Suite 930  
Washington, DC 20036

Dear Lisa:

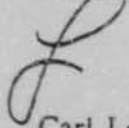
On Wednesday, November 1, 1995 the Democratic Senatorial Campaign Committee is having a major dinner with Democratic Members of the United States Senate. Former Governor Ann Richards will be the guest speaker. Your support of the DSCC is very important to me.

It would be a tremendous help to me if you would buy a ticket or a table and credit your contribution to me. The requested contribution is \$1,500 per person. This fundraising event is crucial to my reelection effort next year.

The DSCC maintains a record (a "tally") of how much money each candidate helps to raise for the Committee. The amount of money to be spent by the DSCC on my behalf is based in part on my tally, among other factors, like my likelihood of winning and my need for DSCC funds. It would be a big help if on the response card you would credit your contribution to me and if you want, request to sit at my table.

If you have any questions, please feel free to call me or Tina Stoll at (202) 544-8963. Your support is greatly appreciated. I hope to see you on November 1.

Sincerely,



Carl Levin

## Senator Carl Levin

December 29, 1995

Mr. William Dyer  
National Structured Settlements PAC  
1420 16th Street, NW  
Washington, DC 20006

Dear William:

I want to keep you up-to-date on the 1996 Michigan Senate race.

Right now, my prospects look pretty good. My poll numbers are solid, my campaign organization is coming together, and I'm confident that I have a good record to run on. My war chest (over \$2 million raised, \$1.5 million cash-on-hand) appears, at glance, to be enough to prevail.

However, I'm concerned about running as an incumbent in an anti-incumbent time. I'm also concerned about the spending capabilities of my opponents: a multi-millionaire who just wrote himself a \$700,000 check (and has vowed to spend up to \$8 million to defeat me), and a well-known talk show host. The media campaign needed to stand against either one of these challengers will be tremendously expensive.

The DSCC maintains a record (a "tally") of how much money each candidate helps to raise for the Committee. The amount of money to be spent by the DSCC on behalf of the party nominee is based on the nominee's tally record and, among other factors, the nominee's likelihood of winning and need for DSCC funds.

That's why I'm hoping you will be able to help me in a very specific way: would you be able to tally all or part of your 1996 DSCC contribution to me? I would greatly appreciate it.

Please do not hesitate to contact me or Tina Stoll at (202) 544-8963 if you have any questions about this. Thanks for your support.

Sincerely,

Carl Levin



April 17, 1995

To: Tina  
From: Liz  
Re: Senator Levin calls

---

Here are some good tally calls for Senator Levin. The first set are the calls for the May 9th reception here in Washington. I have attached the fact sheet. These calls are event specific and many are past contributors for the Senator. These are our first priority. He should know most of the individuals. They are all Democrats, Jewish and politically active. I have given you a lot. He should call whoever he knows and feels comfortable about.

I have also included an event specific call for our Banking Breakfast on May 4th.

The others are basic donor club/tally calls that seem suited for Senator Levin. They are in priority order. All club information is included also. I am not sure if the Senator is familiar with the benefits of the different clubs.

Please disregard all past call sheets. They have since been updated and are included.

Thanks Tina. If you have any questions, call me at 202-485-3136. Let me know how it goes.

97043803537

Mr. Sam Dawson "Sam"  
 United Steelworkers of America  
 815 16th Street, N.W., 7th Floor  
 Washington, DC 20006  
 (202)638-6929 (B)

PAC Contributor; Status is Active

**Levin call**

Please call Sam and ask that they give \$15K to the DSCC as soon as possible to help retire our debt. The contribution can be tallied to your race.

(03/27/95 - young)

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	\$0.00
1994	\$15,000.00
1993	\$15,000.00
1992	\$15,000.00
1991	\$15,000.00
1990	\$15,000.00
1989	\$15,000.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

CLUB INFORMATION:

LA A Dec 31, 1995  
 LC A Jan 25, 1994 Renewed for Cong. Dinner

ALL ADDRESSES:

Five Gateway Center, Pittsburgh, PA 15222  
 815 16th Street, N.W., 7th Floor, Washington, DC 20006

ALL PHONES:

(202)638-6929 (Business)  
 (412)562-2371 (Business)  
 (412)562-2400 (Business)  
 (202)347-6735 (Fax)

- Call Results -

Mr. George B. Gould "George"  
Asst. to the President  
National Association of Letter Carriers  
100 Indiana Avenue, NW  
Washington, DC 20001  
(202)393-4695 (B)

PAC Contributor; Status is Active

Levin call

Please call George and ask that he give at least \$5,000 of  
his \$15,000 annual commitment to the DSCC now.

(03/28/95 - young)

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	\$0.00
1994	\$15,000.00
1993	\$15,000.00
1992	\$15,000.00
1991	\$15,000.00
1990	\$15,000.00
1989	\$15,000.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

CLUB INFORMATION:

ALL ADDRESSES:

100 Indiana Avenue, NW, Washington, DC 20001

ALL PHONES:

(202)393-4695 (Business)

(202)737-1540 (Fax)

- Call Results -



Mr. Andrew T. Malleck "Andy"  
 National Legislative Representative  
 Maintenance of Way Employees  
 400 North Capitol Street, N.W., Suite 852  
 Washington, DC 20001  
 (202)638-2135 (B)

PAC Contributor; Status is Active

**Levin call**

Their cash on hand as of the last FEC filing on 12/31/94 was \$52,508. They did not give any money to the DSCC last cycle. Please ask them to resume their support of the DSCC and to commit to giving \$15K this year. The monies may be tallied to your campaign.

(03/28/95 - young)

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	\$0.00
1994	\$0.00
1993	\$15,000.00
1992	\$15,000.00
1991	\$15,000.00
1990	\$15,000.00
1989	\$15,000.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

CLUB INFORMATION:

LA E Dec 31, 1994  
 LC E Apr 1, 1994 Pays in instaliments of \$2,000.

ALL ADDRESSES:

400 North Capitol Street, N.W., Suite 852, Washington, DC 20001

ALL PHONES:

(202)638-2135 (Business)  
 (202)737-3085 (Fax)

- Call Results -

Mr. Frederick H. Nesbitt "Fred"  
 Legislative Manager  
 International Association of Fire Fighters  
 1750 New York Avenue, NW  
 Washington, DC 20006  
 (202)737-8484 (B)

PAC Contributor; Status is Active

Senator Levin call

Please ask Fred to contribute \$5,000 as soon as possible.

(04/17/95 - grossman)

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	\$0.00
1994	\$6,000.00
1993	\$3,000.00
1992	\$5,000.00
1991	\$4,500.00
1990	\$400.00
1989	\$0.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

CLUB INFORMATION:

LA A Dec 31, 1995  
 RT A Jun 10, 1995

ALL ADDRESSES:

1750 New York Avenue, NW, Washington, DC 20006

ALL PHONES:

(202)737-8484 (Business)  
 (202)737-8418 (Fax)

- Call Results -

Mr. John Ford "John"  
 Director, Government Relations  
 Kellogg Better Government Committee  
 601 Pennsylvania Avenue, NW, Suite 900  
 Washington, DC 20004  
 (202)434-8262 (B)

PAC Contributor; Status is Active

**Sen. Levin Roundtable Call**

In the past, Kellogg has only given to the DSCC when solicited by yourself or Bob Carr. Please ask them to join the DSCC Roundtable by making a \$5000 contribution and tallying to you.

(03/27/95 - grossman)

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	\$0.00
1994	\$1,000.00
1993	\$1,500.00
1992	\$1,750.00
1991	\$9,000.00
1990	\$5,000.00
1989	\$750.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

CLUB INFORMATION:

RT E Feb 1, 1992 he wants to sponsor an event for us

ALL ADDRESSES:

601 Pennsylvania Avenue, NW, Suite 900, Washington, DC 20004  
 One Kellogg Square, P.O. Box 3599, Battle Creek, MI 49016

ALL PHONES:

(202)434-8262 (Business)  
 (202)639-8238 (Fax)

- Call Results -



Ms. Evelyn Duhrow "Evy"  
 Vice President  
 International Ladies Garment Workers Union  
 815 16th Street, N.W., Room 103  
 Washington, DC 20006  
 (202)637-5353 (B)

PAC Contributor; Status is Active

**Levin call**

ILGWU has not given to us since 1992 because they were unhappy with Senator Graham. Please ask them to resume their contributions to the DSCC. Their cash on hand as of 12/31/94 was \$1,786,947. Their common reason for not contributing is a lack of funds. (?) Their contribution may be tallied to your race.

(03/28/95 - young)

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	\$0.00
1994	\$0.00
1993	\$0.00
1992	\$15,000.00
1991	\$15,000.00
1990	\$15,000.00
1989	\$15,000.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

CLUB INFORMATION:

LC E Jan 1, 1993 93' Upset with Sen. Graham for vote on textile bill.

ALL ADDRESSES:

1710 Broadway, New York, NY 10019  
 815 16th Street, N.W., Room 103, Washington, DC 20006

- Call Results -

Mr. Daniel Lucas "Dan"  
Political Director  
Service Employees International Union  
1313 L Street, N.W.  
Washington, DC 20005  
(202)898-3200 (B)

PAC Contributor; Status is Active

Levin call

Please ask Dan To contribute \$15K to the DSCC this month and  
tally at least a portion to your campaign.

(04/17/95 - Grossman)

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	\$0.00
1994	\$15,000.00
1993	\$15,000.00
1992	\$15,000.00
1991	\$15,000.00
1990	\$15,000.00
1989	\$15,000.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

CLUB INFORMATION:

ALL ADDRESSES:

1313 L Street, N.W., Washington, DC 20005

ALL PHONES:

(202)898-3352 (Business)  
(202)898-3304 (Fax)  
(202)898-3200 (Business)  
(202)898-3217 (Business)

- Call Results -

Mr. Chuck Loveless "Chuck"  
 American Federation of State, County &  
 Municipal Employees  
 1625 L Street, NW, Fourth Floor  
 Washington, DC 20036  
 (202)429-5020 (B)

PAC Contributor; Status is Active

**Levin Call**

Please ask Chuck to contribute \$14K to the DSCC this month  
 and tally at least a portion to your campaign.

(04/17/95 - Grossman)

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	\$1,000.00
1994	\$15,000.00
1993	\$15,000.00
1992	\$15,000.00
1991	\$15,000.00
1990	\$15,000.00
1989	\$15,000.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

Mar 27, 1995 \$1,000.00 LC St. Patrick's Day Breakfast

CLUB INFORMATION:

ALL ADDRESSES:

1625 L Street, NW, Fourth Floor, Washington, DC 20036

ALL PHONES:

(202)223-3413 (Aux. Fax)  
 (202)429-1185 (Business)  
 (202)429-1197 (Fax)  
 (202)429-5020 (Business)  
 (202)429-1100 (Business)

- Call Results -

97043803545



Mr. Larry Eanes "Larry"  
 COPE Director  
 United Rubber Workers  
 570 White Pond Drive  
 Akron, OH 44320  
 (216)869-0320 (B)

PAC Contributor; Status is Active

Senator Levin call

Please ask Larry to contribute \$5,000 as soon as possible,  
 and tally his contribution to you.

(04/17/95 - grossman)

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	\$0.00
1994	\$5,000.00
1993	\$5,750.00
1992	\$10,750.00
1991	\$5,000.00
1990	\$5,000.00
1989	\$5,100.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

CLUB INFORMATION:

LA A Dec 31, 1995  
 RT A Apr 1, 1995

ALL ADDRESSES:

570 White Pond Drive, Akron, OH 44320

ALL PHONES:

(216)869-5627 (Fax)  
 (216)869-0320 (Business)

- Call Results -

Mr. Michael McLauchlan "Mike"  
Comerica Incorporated PAC  
211 West Fort Street  
Detroit, MI 48226  
(313)222-3688 (B)

PAC Contributor; Status is Active

**Senator Levin Banking Call**

The DSCC is hosting a small breakfast for the Banking Community on May 4 with Senators Kerrey, Dodd, Conrad, Murray and Bryan (see attached sheet for more information). Please ask Mike to participate in this breakfast (or send a representative) by contributing \$5,000 to the DSCC and tallying to your campaign.

(04/17/94 - grossman)

CONTRIBUTION HISTORY (YEARLY SUMMARY):

1995	\$0.00
1994	\$0.00
1993	\$0.00
1992	\$1,000.00
1991	\$0.00
1990	\$0.00
1989	\$0.00

CONTRIBUTION HISTORY (CURRENT CYCLE):

CLUB INFORMATION:

ALL ADDRESSES:

211 West Fort Street, Detroit, MI 48226

ALL PHONES:

(313)222-3688 (Business)

- Call Results -

97043803547

- Call Results -



O'BRIEN • CALIO

LAWRENCE F. O'BRIEN, III

June 21, 1996

The Honorable Carl Levin  
United States Senate  
459 Russell Senate Office Building  
Washington, D.C. 20510

Re: DSCC Tally - Levin

Dear Carl:

I was delighted to see you at the Archive's salute to Mark Hatfield on June 11 and to have a chance to chat briefly. The event was a well justified tribute a fine public servant.

In a brief aside at the end of the dinner, I mentioned that I am a participant in the DSCC Majority Trust program and perhaps could be of some help via that mechanism. By letter dated June 20, 1996, a Majority Trust "tally" to the Levin campaign in the amount of \$1,500.00 has been made.

Best of luck in your campaign.

Sincerely,

/s/ L.O.B. III

Lawrence F. O'Brien III

97043803549

O'BRIEN \* CALIO

LAWRENCE F. O'BRIEN, III

August 5, 1996

The Honorable Carl Levin  
Friends of Carl Levin  
236 Massachusetts Avenue, N.W., #202  
Washington, DC 20002

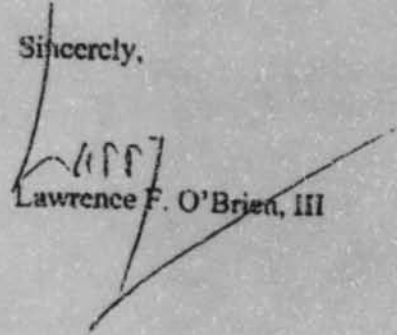
Dear ~~Senator~~ <sup>(IT)</sup> Levin:

I am in receipt of your letter, dated August 2, 1996.

By letter dated June 20, 1996, a DSCC "tally" in the amount of \$1,500.00 was made to your campaign. A file copy of my letter to you informing you of that is enclosed, just in case there was any confusion.

I enjoyed being with you at David Pryor's breakfast and wish you every success in your campaign.

Sincerely,

  
Lawrence F. O'Brien, III

Enclosure

9704380355C

**Larry J. Hochberg**

1400 South Wolf Road - Suite 200  
Wheeling, Illinois 60090-6524

June 25, 1996

The Honorable Bob Kerrey  
Democratic Senatorial Campaign Committee  
430 South Capitol Street, S.E.  
Washington, D.C. 20003

Dear Bob:

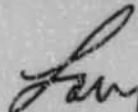
Enclosed is my \$5,000 contribution to the Democratic Senatorial Campaign Committee. I would like this contribution tallied to these campaigns as follows:

Senator Carl Levin	\$2000
Congressman Dick Durbin	1000
Senate Campaign	
Senator Tom Harkin	1000
Senator John Kerry	1000

Should you have any questions, please call me at 847-520-0100.

Best of luck for a successful election season.

Best regards,



Larry J. Hochberg

LJH:js

enclosure

cc: ✓ The Honorable Carl Levin  
The Honorable Dick Durbin  
The Honorable Tom Harkin  
The Honorable John Kerrey

97043803551





April 4, 1996

Ms. Melissa Maxfield  
Director, Leadership Circle  
Democratic Senatorial Campaign Committee  
430 South Capitol Street, SE  
Washington, DC 20003

Dear Ms. Maxfield:

The National Committee to Preserve Social Security & Medicare recently renewed its membership in the DSCC's Leadership Circle.

Please apply \$2,000 of that contribution to Senator Carl Levin's Tally Sheet.

Feel free to give me a call should you have any questions or need additional information.

Sincerely,

Max Richtman  
Executive Vice President

CC: The Honorable Carl Levin

9 7 0 4 3 8 0 3 5 5 2



# Democratic Senatorial Campaign Committee

430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447

Internet: info@dacc.org

J. Robert Murray, RE  
Chairman

## Fact Sheet on the 1995 DSCC Annual Senate Dinner "The Trail to Victory Begins in Oregon"

### Program Chairs

Next Majority Trust  
John Breaux, LA

Women's Caucus  
Barbara Mikulski, MD  
Barbara Boxer, CA

Leadership Circle  
Arlene Canino, ND

Labor Council  
Ruth Feingold, WI

DSCC Roundtable  
David Pryor, AR  
Cory McCaskey-Bray, IL  
Patty Murray, WA

Honorary Chairman: Senator Robert C. Byrd

Chairman, DSCC: Senator Bob Kerrey

Dinner Co-Chairs: Senator Tom Daschle, Senator Wendell Ford,  
Senator Barbara Mikulski, Senator John Kerry,  
Senator Harry Reid, Senator Jay Rockefeller,  
Senator Byron Dorgan and Senator John Breaux

Date: Wednesday, November 1, 1995

Time: Reception 6:00 p.m.  
Dinner 7:30 p.m.

Place: Sheraton Washington Hotel  
2660 Woodley Road at Connecticut Avenue, N.W.  
Washington, DC

Attire: Business Attire

Ticket Price: \$1,500 individual  
\$15,000 table

Proceeds: Democratic Senatorial Campaign Committee  
to benefit 1996 U.S. Senate Candidates, including  
Democratic nominee in Oregon special election

Annual Contribution Limits: An individual may contribute a maximum of \$20,000  
to the DSCC which counts against the \$25,000 annual  
federal limit. A PAC may contribute up to \$15,000.

Tally Credit: Contributions to the 1995 Fall Dinner may be tallied  
to any Democratic U.S. Senator or any 1996 nominee  
for the U.S. Senate

DSCC Contacts: Lisa Cowell (202) 485-3110  
Jonathan Grossman (202) 485-3112  
Melissa Maxfield (202) 485-3138

LEVEL 1 - 25 OF 90 STORIES  
 Copyright 1996 Denver Publishing Company  
 Rocky Mountain News  
 January 10, 1996, Wednesday

SECTION: EDITORIAL; Ed. F; Pg. 38A  
 LENGTH: 734 words

HEADLINE: Democrats told: To get, first give

BYLINE: Peter Blake; Rocky Mountain News Staff Writer

BODY:

It smacks of that scam where the hustler goes up to the little old lady at the bank to tell her he's willing to share the \$ 1 million he just found in the street, but first she has to put up \$ 10,000 to prove her good faith.

But since it's being run by the Democratic Senatorial Campaign Committee, it's got to be legit, right?

Rocky Mountain News, January 10, 1996

The DSCC is holding its winter retreat at Aspen this weekend for its "Majority Trust" - all those fat cats who've given at least \$ 20,000 to the party.

There will be receptions, dinners, discussions, a brunch and, of course, time for skiing. There to spill inside information to the high rollers will be Sens. Howell Heflin of Alabama (picture him on skis!), Joe Biden of Delaware, Tom Harkin of Iowa and Byron Dorgan of North Dakota.

Also invited are Colorado's five Democratic Senate candidates.

"As you know, the DSCC is allowed to allocate \$ 325,000 to the Colorado Senate race," says the letter signed by DSCC chairman Bob Kerrey of Nebraska.

That's the bait. Now comes the switch: "I am asking you as well as the other Colorado Senate candidates to commit to raising \$ 10,000 toward this weekend," Kerry adds. The funds are "crucial" if the DSCC is to fully fund Democratic Senate nominees.

He also reminds the candidate and his donors that the money raised for the DSCC can be earmarked right back to the candidate. Presuming, of course, he or she wins the primary.

Rocky Mountain News, January 10, 1996

It's one way of getting around the \$ 2,000-per-contributor limit. Ain't soft money grand!

Are Colorado's candidates falling for this hustle? Yes and no.

\* Lawyer Tom Strickland said he'd "drop by" since he'll be campaigning in the area anyway. As for bringing \$ 10,000, he may not have it by Friday but "we're going to try and do our part along the way."

\* State Sen. Paul Weissmann is going to Washington this weekend for a cousin's bat mitzvah. "But I don't know if I'd go anyway," he said. "I don't understand the rationale." Besides, "why is it every time politicians go to Aspen they think they have to raise money?"

\* Law dean Gene Nichol said he wasn't going. "We're running a campaign that's concentrating hard on questions of political reform," he said, "so it doesn't seem to me like the kind of thing I should do."

\* City Councilwoman Ramona Martinez told the DSCC she doesn't have \$ 10,000 but plans to attend anyway. "I sort of chuckled and said, 'You've gotta be kidding.' I understand what they're trying to do . . . but the folks I know just don't have that kind of money." She's looking forward to rubbing elbows with

Rocky Mountain News, January 10, 1996

the rich. "I've never been to this kind of event in my entire life," she said.

\* Populist businessman Phil Perington will attend, but only to stick a

9704380354



figurative thumb in their eye. "It's such an exclusive, elitist thing," he said. "No wonder the party's lost the faith of the people . . . They expect people to volunteer and do all the grunt work, and they never get to meet their leaders . . . What I see happening is the big-money candidates going up there to meet the big-soft-money givers."

Colorado Democratic chairman Mike Beatty predicted non-payers like Martinez would be welcomed anyway. "What are they going to do, turn her away at the door?" he asked.

The weekend gives candidates "an opportunity to differentiate themselves," he said. Some people react adversely to such an event, "others are going to be able to go in there and raise money. No question that's part of the process."

LANGUAGE: English

LOAD-DATE: January 12, 1996

97043803555

# TRANSPORTATION POLITICAL EDUCATION LEAGUE

January 31, 1996

Democratic Senatorial Campaign Committee  
Leadership Circle  
430 South Capitol Street, S.E.  
Washington, D.C. 20003

Dear Sir or Madam:

Please tally the attached check (Check No. 1322) in the amount of \$14,250.00 from the Transportation Political Education League to Senator Paul Wellstone.

Sincerely,

James Brunkenhoefer

Enclosure

97043803556

# Wellstone for Senate

EXHIBIT 17

236 Massachusetts Avenue, N.E. • Suite 202 • Washington, D.C. 20002 • (202) 544-8963

## FAX COVER SHEET

TO: Jim Brunkenhoefer

FROM: Peter Sherman

PAGES INCLUDING  
FAX COVER SHEET: 2

### COMMENTS:

Sorry for bothering you about this. My concern is that without something from UTU the DSCC will hold-up crediting your check to Paul.

My fax number is (202) 546-2321.

Thanks for your help.

97043803557





# Democratic Senatorial Campaign Committee

430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447  
Internet: info@dscn.org

August 7, 1996

J. Robert Kerrey, NE  
Chairman

Program Chair

Next Majority Trust  
John Breaux, LA

Women's Council

Burke Mikulski, MD  
Barbara Boxer, CA

Leadership Circle

Reel Conrad, ND

Labor Council

Russ Feingold, WI

DSCC Board/Staff

David Pryor, AR  
Carol Mosley Braun, IL  
Patty Murray, WA

Mr. Mark Warner  
Mark Warner for Senate  
2120 Staples Mill Rd., Suite 11  
Richmond, VA 23230

Dear Mark,

Thanks to the combination of strong incumbents and our talented class of challengers, Democrats are poised to re-gain the majority in the U.S. Senate. With hard work, and the money needed to even the playing field with the perennially well-funded opposition, we will take back the Senate in November.

As Chairman of the DSCC, I am dedicated to ensuring our candidates have the resources needed to wage a successful campaign. However, as you know all too well, we can't spend money on Senate campaigns, if we don't raise it first.

To that end, we will be hosting our Annual Senate Issues Conference and Dinner in Washington on Thursday, September 26. President Bill Clinton will be our honored guest at dinner. As you know, this is always an important event on the DSCC calendar, with many of our most loyal friends and supporters coming in from around the country. I hope you will make every effort to join us, and you will take this opportunity to raise DSCC money for your tally.

To date, you have raised \$97,250.00 against your overall tally of \$638,442.00. Since the Annual Senate Dinner will be one of the final major fundraising events on the DSCC's calendar, it will provide a terrific opportunity for all Senate candidates to raise significant tally money. I have enclosed detailed information on this full day of activities here in the nation's capital. We are also planning DSCC events with the President in Florida, Los Angeles and New York that will provide additional opportunities to raise tally money.

In addition, I hope this dinner will give you a chance to meet our major donors from across the country who will in turn be supportive of your campaign's fundraising efforts.

Should you have any questions regarding the DSCC's Annual Issues Conference and Dinner, or to discuss fundraising plans, please feel free to contact Lisa Cowell at (202) 224-2447.

Sincerely,

Bob Kerrey

cc: Anita Rimler

*Paid for and authorized by the Democratic Senatorial Campaign Committee  
Contributions are not tax deductible.*

9704380315



# Democratic Senatorial Campaign Committee

430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447  
Internet: info@dscn.org

**S. Robert Kerry, RI**  
Chairman

## Program Chairs

**Host: Majority Trust**  
John Treavis, LA

**Women's Council**  
Barbara Mikulski, MD  
Barbara Boxer, CA

**Leadership Circle**  
Kent Conrad, ND

**Labor Council**  
Russ Feingold, WI

## DSCC Roundtable

David Pryor, AR  
Carol Mosley-Blair, IL  
Patty Murray, WA

## Fact Sheet on the DSCC's "Annual Senate Issues Conference and Dinner"

**Date:** Thursday, September 26, 1996

**Schedule:** DSCC's Issues Conference and Luncheon  
8:30 am - 1:30 pm  
Washington Court Hotel  
Legislative update and political discussion with  
Democratic Senators and political pundits

**White House Briefing**  
(pending confirmation)  
2:00 pm - 4:00 pm

**Evening:** DSCC Annual Senate Dinner

**Time:** 6:30 - 7:30 pm reception  
7:30 - 9:30 pm dinner

**Location:** Hyatt Regency Washington on Capitol Hill  
400 New Jersey Avenue, NW

**Dinner Chairs:** Senator Edward M. Kennedy  
Senator Joseph I. Lieberman

**Attendees:** Senator Tom Daschle, Democratic Leader and the  
Democratic Members of the U.S. Senate

**Special Guest:** President Bill Clinton

**Honorees:** Senator Bill Bradley, Senator Jim Exon, Senator Howie  
Heflin, Senator J. Bennett Johnston, Senator Sam Nunn,  
Senator Claiborne Pell, Senator David Pryor, Senator  
Paul Simon

**Attire:** Business Attire

**Ticket Price:** \$5,000 personal or PAC (Issues Conference and Lunch,  
White House Briefing and Annual Senate Dinner)  
\$2,000 personal or PAC (Annual Senate Dinner Only)

**For More Information:** Contact Lisa Cowell or Amy Edwards at the DSCC at  
(202) 224-2447

Updated August 7, 1996

*Paid for and authorized by the Democratic Senatorial Campaign Committee*  
*Contributions are not tax deductible.*

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Durbin Targets Salvi Over Tobacco Cash In Convention Speech

Eds: Moved for Friday AME cycle.

By DENNIS CONRAD

Associated Press Writer

CHICAGO (AP) - Dick Durbin, for more than a decade Congress' leading tobacco lobby foe, took his moment on the Democratic National Convention's center stage to use the issue against his GOP rival in Illinois' Senate race.

Given the opportunity by President Clinton's convention handlers, the Springfield congressman on Thursday addressed the national cable audience before the president delivered his acceptance speech.

Although his election opponent, state Rep. Al Salvi, R-Mundelein, was not mentioned by name, Durbin was direct enough in his attack.

"I know there is a political price to pay for challenging the tobacco giants," he shouted in a hoarse voice weary from convention events. "My Senate opponent has received more tobacco contributions than any new Senate candidate in America. But make no mistake - I am proud to be the number one political target of the tobacco lobby."

Campaign reports filed this year with the Federal Election Commission show Salvi has received \$14,000 from tobacco interests, Durbin aides said.

The Salvi campaign did not challenge Durbin's figures. Instead, it suggested that Durbin was hypocritical on the issue by having accepted \$17,500 this year from the Democratic Senatorial Campaign Committee, which it said took in at least \$40,000 from tobacco interests in the past two years.

"The only way the Democratic Senatorial Campaign Committee money goes to me is if I raise the money and it is tallied to me," Durbin responded, adding he gets no money from tobacco interests.

Durbin's speech was another sign of the Democrats' efforts to portray themselves as more caring than Republicans about children and more concerned about the unhealthy influence of tobacco on politics and health.

Vice President Al Gore on Wednesday emotionally recalled before the convention how his sister began her smoking habit at 13 only to die of cancer in her 40s.

For Durbin, his personal story was about his father who died of lung cancer nearly 37 years ago after being a two-pack a day cigarette smoker.

"He never lived to see me graduate from high school or college, get married, present him with a grandchild or take the oath of office as a congressman," Durbin said.

Salvi spokesman Dan Patlak said the GOP candidate has a strong record in the General Assembly of supporting laws that seek to keep tobacco from children, including a ban on all cigarette vending machines.

As to his differences with his Democratic opponent, Salvi "believes it's the choice of adults whether or not they smoke," he said. "It shouldn't be outlawed by the government."

In his speech, Durbin, who helped push through the ban on smoking on airlines nine years ago, said he was proud Clinton was the first president with the courage to join him in fighting tobacco use among kids.

"I will be prouder still when the day comes, and it will, when this party is tobacco free and the health of our children is more

important than any special interest group," he said.

Not all delegates were sure Durbin's attacks were wise.

"The problem you get is a backlash, and the people who probably smoke the most are the Democrats," state Sen. Danny Jacobs of East Moline said while holding a cigar in a hotel lobby.

(PROFILE  
(CAT:Business;)  
(CAT:Medical;)  
(CAT:Political;)  
(SRC:AP; ST:IL;)  
)

[al&salvi]

97043803561

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )

Democratic Senatorial Campaign )  
Committee and Paul Johnson, as )  
Treasurer )

**SENSITIVE**

MUR 3620

OCT 1 1996

**EXECUTIVE SESSION**

**SUBMITTED LATE**

GENERAL COUNSEL'S REPORT

I. BACKGROUND

At a meeting between the Commission's General Counsel and the counsel for the National Republican Senatorial Committee ("NRSC") on September 27, 1996, counsel for the NRSC filed an Emergency Motion for Civil Enforcement of Conciliation Agreement on behalf of John D. Heubusch, Executive Director of the National Republican Senatorial Committee. Attachment 1a. While this motion is signed and sworn to and appears to meet the criteria for a proper complaint pursuant to 2 U.S.C. § 437g(a)(1), it deliberately was not styled as a complaint. The central allegation contained in this motion is that the Democratic Senatorial Campaign Committee ("DSCC") has knowingly and willfully violated the provisions of a conciliation agreement by operating its "tally" program in violation of the remedial provisions of the conciliation agreement.

At issue in the underlying matter was whether certain contributions made to the DSCC and tallied to the DSCC accounts of various Democratic Senate candidates during the 1991-92 and 1993-94 election cycles were actually earmarked to those candidates. On August 15, 1995, the Commission accepted a signed conciliation agreement from the

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Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, and took no further action against the candidates.

The conciliation agreement signed by the DSCC and the Commission contained the following admissions' clause:

V. Because the parties desire an expeditious resolution of this matter, the parties enter into this conciliation agreement prior to the Commission completing its investigation. The parties agree that --

1. The DSCC and certain of its candidates prepared and distributed fundraising solicitations for the DSCC's tally program which can be fairly and reasonably read to mean that contributions would be earmarked for a particular candidate within the meaning of 2 U.S.C. § 441a(a)(8). In response to these solicitations, some contributors earmarked their contributions to the DSCC for a particular candidate.

2. Consistent with its stated policy and practice of not accepting earmarked contributions, the DSCC did not treat such tallied contributions as being earmarked for the designated candidate. When a contribution has been earmarked by a contributor for a particular candidate, a political committee receiving the contribution must follow the requirements of the Act, which the DSCC did not do in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 102.8, 110.6(b)(2)(iii) and 110.6(c)(1). Some of the funds received by the candidate committees as coordinated party expenditures from the DSCC were earmarked contributions which the DSCC, *inter alia*, failed to report as earmarked contributions and the candidate committees, in turn, did not report as earmarked contributions, in violation of 11 C.F.R. § 110.6(c)(2).

3. The parties agree that the solicitations could have been clarified to avoid soliciting earmarked contributions by additional DSCC efforts to assure that its staff and the candidate committees had a better understanding of the tally program and communicated this understanding more effectively to donors when soliciting for the DSCC's tally program.

Attachment 1e at 7-8. Besides requiring the payment of a \$75,000 civil penalty, the conciliation agreement required the following remedial action:

2. The DSCC agrees to implement the following remedial steps:

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a. For contributions to the DSCC that appear to be earmarked, the DSCC will refund the contributions or forward the contributions to the designated candidate, in accordance with 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 102.8, 110.6(b)(2)(iii), and 110.6(c)(1).

b. On an on-going basis, the DSCC will provide additional education and training to DSCC staff and participants in the tally program, including the staff of Democratic senate candidates, which will emphasize that: (1) DSCC does not accept contributions earmarked for a particular candidate; (2) tallied contributions will be spent for DSCC activities and programs as the Committee determines within its sole discretion; and (3) contributors must be advised of (1) and (2) above when the DSCC and tally program participants solicit tallied contributions.

c. The DSCC will utilize standard language in its solicitations pertaining to the tally program and, as part of its education and training, will instruct its tally participants to include this language in solicitations distributed by such candidates, their committees and their agents. This language will provide, in substance, that the DSCC does not accept contributions earmarked for a particular candidate and that tallied contributions will be used as the DSCC determines in its sole discretion. At a minimum, the language will state that: "The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion."

d. The DSCC will implement reasonable procedures to review DSCC and Democratic Senate candidate fundraising solicitations pertaining to the tally program to ensure that the solicitations cannot be reasonably read to solicit earmarked contributions, in accordance with the requirements of Section VI(2)(b)-(c) of this agreement.

Attachment 1e at 9-10.

The Federal Election Campaign Act of 1971, as amended, ("Act" or "FECA") clearly contemplates the Commission's ability to file a civil action to enforce conciliation agreements without resorting to all of the procedures required for a de novo enforcement action. 2 U.S.C. § 437g(a)(5)(D). In addition, the conciliation agreement at issue here permits a third party to file a complaint concerning compliance with the agreement,

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though the agreement and the Act are silent as to the procedures to be followed in that case. Attachment 1e at 10. Because of the unique styling of the NRSC's submission and the nature of the allegations, this Office believes the best course of action at this stage would be to allow the DSCC to respond to the motion before determining how to proceed.

Accordingly, this Office recommends that the Commission approve the attached letters which are to be sent to the DSCC and to the NRSC. Attachments 2 and 3. The proposed letters state that once the Commission has received a response from the DSCC, it will determine what further action is appropriate. Following receipt of a response from the DSCC, this Office will make substantive recommendations to the Commission on how to proceed in this matter.

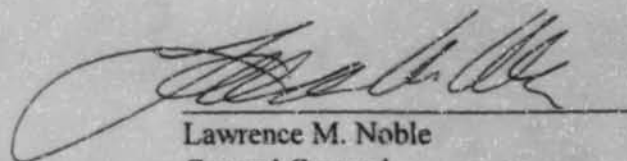
**II. RECOMMENDATIONS**

1. Approve the attached letters.

Date

9/27/96

Lawrence M. Noble  
General Counsel



**Attachments:**

1. Emergency Motion with attachments
  - a. Motion
  - b. NRSC original complaint
  - c. DSCC original response
  - d. Commission original cert
  - e. Conciliation agreement
  - f. Tally documents
2. DSCC notification letter
3. NRSC notification letter

Attorney assigned: Stephan O. Kline

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) MUR 3620  
Democratic Senatorial Campaign )  
Committee and Paul Johnson, )  
as Treasurer )

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the  
Federal Election Commission executive session on October 1,  
1996, do hereby certify that the Commission decided by a  
vote of 5-0 to approve the letters attached to the General  
Counsel's September 27, 1996 report on MUR 3620

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

Attest:

10-1-96  
Date

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

97043803566



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

October 2, 1996

John D. Heubusch  
Executive Director  
National Republican Senatorial Committee  
425 Second Street, N.E.  
Washington, D.C. 20002

RE: MUR 3620

Dear Mr. Heubusch:

This letter acknowledges receipt on September 26, 1996, of your Emergency Motion for Civil Enforcement of Conciliation Agreement in the captioned matter. While not styled as such, this motion meets the criteria for a proper complaint. Respondents will be notified of this motion within five days and will be given a 15 day opportunity to respond. Once the Commission is in receipt of a response, it will determine what further action is appropriate, including whether to go through the enforcement process or to seek immediate enforcement of the conciliation agreement in court. We will notify you accordingly.

Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information should be sworn to in the same manner as the original motion.

Sincerely,

Lawrence M. Noble  
General Counsel

cc: Benjamin L. Ginsberg

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

October 2, 1996

Robert F. Bauer, Esq.  
Perkins Coie  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2011

RE: MUR 3620  
Democratic Senatorial Campaign  
Committee and Paul Johnson, as treasurer

Dear Mr. Bauer:

The Federal Election Commission received the enclosed filing, referred to as an Emergency Motion for Civil Enforcement of Conciliation Agreement, which indicates that the Democratic Senatorial Campaign Committee and Paul Johnson, as treasurer, ("DSCC") may have violated the Federal Election Campaign Act of 1971, as amended. While not styled as such, this motion meets the criteria for a proper complaint.

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. The DSCC's response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. Once the Commission has received a response it will determine what further action is appropriate, including whether to go through the enforcement process or to seek immediate enforcement of the conciliation agreement in court. We will notify the DSCC accordingly.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and 2 U.S.C. § 437g(a)(12)(A), unless the DSCC notifies the Commission in writing that it wishes the matter to be made public. If you have any questions, please contact Stephan Kline, the attorney assigned to this matter at (202) 219-3400.

Sincerely,

Lawrence M. Noble  
General Counsel

Enclosure

Emergency Motion

*Celebrating the Commission's 20th Anniversary*

YESTERDAY, TODAY AND TOMORROW  
DEDICATED TO KEEPING THE PUBLIC INFORMED

97043803568

PATTON BOGGS, L.L.P.  
2550 M STREET, N.W.  
WASHINGTON, D.C. 20037-1350  
(202) 457-6000

FACSIMILE: (202) 457-6315

WRITER'S DIRECT DIAL

(202) 457-6405

October 8, 1996

Lawrence M. Noble, Esquire  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

OCT 8 11 42 AM '96

RE: Emergency Motion for Civil Enforcement of Conciliation Agreement

Dear Mr. Noble:

As counsel to the National Republican Senatorial Committee ("NRSC"), this will respond to your October 2, 1996 letter to John Heubusch concerning the Emergency Motion for Civil Enforcement of Conciliation Agreement in MUR 3620 filed by the NRSC on September 26, 1996.

This Emergency Motion is not intended to be a formal Complaint filed under section 437g(a)(1) of the Federal Election Campaign Act ("Act"). Under the statute, the complaint process initiates enforcement actions into new violations of the Act. For that reason, the NRSC on October 1, 1996 filed a separate complaint alleging violations of the earmarking provisions and contribution limitations of the Act in the 1996 cycle by the Democratic Senatorial Campaign Committee ("DSCC") and the 1996 Democratic Senate candidates through the DSCC's tally program. Your office has correctly styled that complaint as a new MUR and begun the statutory required enforcement notice procedures.

By contrast, the Emergency Motion cannot be treated as a formal complaint since the Commission's internal enforcement process has been completed for that MUR. Indeed, the case file has been certified as closed, and the signed Conciliation Agreement acts as your agency's final action for the violations which occurred during the 1992 and 1994 campaigns. The statutory required notice and response mechanisms of 2 U.S.C. § 437g(a)(1) were already accorded to the respondents when the NRSC filed its original September 24, 1992 complaint, and the subsequent amendments in this matter.



PATTON BOGGS, L.L.P.

Lawrence M. Noble, Esquire

October 8, 1996

Page 2

Under the provisions of the Act, the filing of the NRSC's Emergency Motion does not restart the enforcement process. Instead, the motion is filed pursuant to 2 U.S.C. § 437g(a)(5)(D) which empowers "the Commission to institute a civil action for relief under paragraph (6)(A) if it believes<sup>1</sup> that the person has violated any provision of such conciliation agreement." Paragraph (6)(A) states that if the Commission is unable to "correct or prevent any violation of the Act ... by the methods specified in paragraph (4)(A), the Commission may, upon the affirmative vote of four of its members, institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order ..." Nowhere in (6)(A) is the Commission instructed or authorized to restart the enforcement process.

Accordingly, the Commission is, in our opinion, not following 2 U.S.C. §§ 437g(5)(A) and (6)(A) when it affords respondents notification of the NRSC's "motion within 5 days and [they] will be given a 15 day opportunity to respond." Rather, this is an action reserved for internal enforcement actions and is not consistent with nor authorized by paragraphs (5)(A) and (6)(A). The Commission routinely conforms with sections (4)(A), (5)(A) and (6)(A) when it believes a respondent has violated a conciliation agreement in a closed enforcement case through the nonpayment of a civil penalty. It does not give that respondent notice within five days and a 15-day opportunity to respond. The Commission's standard operating procedure is to file a civil action.

Simply stated, the internal enforcement process for MUR 3620 ended more than a year ago. The Commission has taken its final action. If the Commission believes it needs additional information from the respondent in a closed MUR about its compliance with a conciliation agreement, the proper forum is the judicial discovery process afforded in an emergency civil action.

The NRSC has given the Commission sufficient documentary evidence for it to have the requisite "belief" that the DSCC has violated the conciliation agreement it signed with the Commission. We respectfully request that the Commission make a judgment by October 9, 1996, as to whether it has such "belief" on the basis of the materials submitted

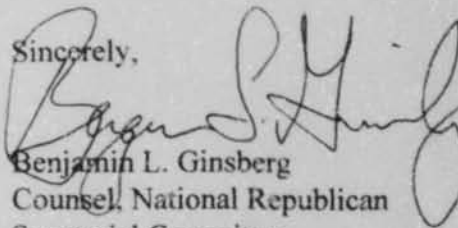
<sup>1</sup> The wording of the statute is "believes", rather than the "reason to believe" language of 2 U.S.C. 437g(a)(2)'s enforcement proceedings. Furthermore, the statute's plain wording does not require that the Commission have definitive proof before proceeding with judicial enforcement; the only requirement is that the Commission "believe" the conciliation agreement has been violated -- the same standard that any civil plaintiff must meet before filing a complaint in federal district court.

PATTON BOGGS, L.L.P.

Lawrence M. Noble, Esquire  
October 8, 1996  
Page 3

to it to seek the emergency relief requested. The NRSC further requests notification of the Commission's decision by the close of business, October 9, 1996.

Sincerely,



Benjamin L. Ginsberg  
Counsel, National Republican  
Senatorial Committee

cc: Members of the Federal Election Commission

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

VIA FACSIMILE

October 9, 1996

Benjamin L. Ginsberg, Esq.  
Patton Boggs, L.L.P.  
2550 M Street, N.W.  
Washington, D.C. 20037-1350

RE: MUR 3620  
National Republican Senatorial Committee

Dear Mr. Ginsberg:

This is in response to your letter dated October 8, 1996, in which you request that the Commission make a judgment by October 9, 1996, as to whether it has the belief that the Democratic Senatorial Campaign Committee has violated the conciliation agreement, on the basis of the materials submitted to it, and will seek the emergency relief requested.

Contrary to the implication expressed in your letter, the Commission has not yet made a determination to treat your emergency motion as a complaint. As this Office informed you by a letter dated October 2, 1996 (and as explained to you personally by the General Counsel), once the Commission is in receipt of a response from the Democratic Senatorial Campaign Committee, "it will determine what further action is appropriate, including whether to go through the enforcement process or to seek immediate enforcement of the conciliation agreement in court."

Sincerely,

Stephan O. Kline  
Attorney

97043803572



PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
607 FOURTEENTH STREET, N.W. WASHINGTON, D.C. 20005-2011  
TELEPHONE: 202 628-6600 FACSIMILE: 202 434-1690

066  
RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

OCT 16 8 11 AM '96

October 17, 1996

Commissioners  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

Re: DSCC Response in MUR 3620

Dear Commissioners:

97043803573  
Enclosed please find the Democratic Senatorial Campaign Committee's response to the NRSC's Motion alleging DSCC's failure to comply with the Conciliation Agreement in MUR 3620. DSCC has forwarded copies of this response to the Commissioners because of the seriousness with which the DSCC views any allegation that it knowingly violated an agreement previously reached with the Commission. DSCC has set out in great detail overwhelming and conclusive proof that this Motion is absolutely without merit and should be dismissed immediately.

As noted in DSCC's response, the Committee is also requesting that upon dismissal of the Motion the Commission release a full statement of reasons in support of its decision, including a very specific repudiation of the "facts" as alleged by the NRSC. That Committee filed a frivolous Motion intended to harass the DSCC and its supporters. Certainly, a similarly frivolous complaint with a federal court would be subject to sanction under Fed. R. Civ. P. 11. While no comparable process is currently available to DSCC under current regulations of the Commission, the Commission should not tolerate this sort of abuse of process.

Because current procedures of the Commission do not allow for an adequate response to these circumstances, DSCC is preparing, and will file shortly, a petition for a rulemaking to amend Commission regulations to provide for appropriate sanctions in such cases. We anticipate that, when adopted, these procedures will allow Respondents like DSCC and the individual contributors, who are harassed in

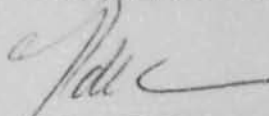
[04005-0001/DA962910.013]

October 17, 1996

Page 2

this fashion in the exercise of their First Amendment rights, to petition the agency for appropriate action to punish and deter such conduct.

Very truly yours,



Robert F. Bauer  
Marc E. Elias  
Counsel to Respondents

cc: Lawrence Noble

97043803574



BEFORE THE FEDERAL ELECTION COMMISSION

OCT 18 8 11 AM '96

IN THE MATTER OF:

DEMOCRATIC SENATORIAL  
CAMPAIGN COMMITTEE and  
PAUL JOHNSON, as Treasurer

MUR 3620

**DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE AND  
PAUL JOHNSON, AS TREASURER'S MEMORANDUM IN OPPOSITION  
TO THE NATIONAL REPUBLICAN SENATORIAL COMMITTEE'S  
MOTION FOR CIVIL ENFORCEMENT**

The Democratic Senatorial Campaign Committee ("DSCC") and its Treasurer, Paul Johnson, submit this memorandum on opposition to the National Republican Senatorial Committee's ("NRSC") motion for civil enforcement in the above-captioned MUR.

**I. INTRODUCTION**

The NRSC has filed a baseless motion for civil enforcement of the conciliation agreement in MUR 3620. In a 29-page motion marked by rhetoric and repetition, the NRSC deliberately misstates the facts of MUR 3620 and the objective evidence that demonstrates the DSCC's compliance with the conciliation agreement.

The DSCC had divided its response into three parts: (1) a brief synopsis of the background of MUR 3620; (2) a point-by-point analysis of the NRSC's motion; and (3) a detailed demonstration that the DSCC has abided by the conciliation agreement in MUR 3620. Once the Commission has had an opportunity to review these materials, the DSCC expects that the Commission will vote unanimously to dismiss.

## II. BACKGROUND

For several election cycles, the DSCC has asked Democratic Senate candidates to assist the Committee in soliciting funds for its activities and operations. Under the "tally" program the DSCC contributor has the option to credit -- or "tally" -- a contribution to the DSCC in the name of a particular candidate, thereby expressing support for that candidate or crediting the candidate with the raising of the contribution for the DSCC's programs and activities.

The amount that a candidate has tallied is one of many factors the DSCC then uses to determine whether to make coordinated expenditures on behalf of a candidate's campaign pursuant to 2 U.S.C. § 441a(d). Other factors include the candidates need for the money, the closeness of the race, and an assessment that the coordinated expenditures would be significant in helping the candidate's campaign.

Concerned with the growing success of the tally program, on September 24, 1992, the NRSC filed a complaint with the FEC charging the DSCC and several of its candidates with having violated the earmarking provisions of the Federal Election Campaign Act ("FECA" or the "Act"). In August 1995, after investigation and negotiation, the DSCC and the FEC agreed to a conciliation agreement settling the charges contained in MUR 3620. (A copy of the MUR 3620 conciliation agreement is attached at Tab A.)

Among other things, the MUR 3620 conciliation agreement:

- Acknowledges that the Federal Election Campaign Act permits the DSCC to ask its candidates to assist the DSCC in soliciting funds for the Committee. (Agreement at § IV, ¶ 11.)

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- Recognizes that while tallied contributions are used to fund coordinated expenditures, 2 U.S.C. § 441a(d), they are also used to fund "other DSCC activities on behalf of its candidates." (*Id.* at ¶ 12.)

- Further recognizes that "tallying" is not earmarking, but rather is a means of "expressing support for that candidate or crediting the candidate with the raising of the contribution for the DSCC's 'coordinated expenditure' program and other activities." (*Id.* at ¶ 13.)

- States that: "[i]t was the DSCC's stated policy and practice to inform contributors that the DSCC did not accept earmarked contributions, that the amount of tallied contributions was a significant factor that the DSCC took into account in citing the amount of 441a(d) expenditures to be made on behalf of a particular candidate, and that the DSCC retained final discretion regarding the use of any tallied contribution." (*Id.* at ¶ 16.)

- Recognized that any "tallied contributions that were earmarked for a designated candidate were not treated as earmarked by the DSCC." (*Id.* at 20.)

In sum, while acknowledging that mistakes had been made in the past, the conciliation agreement clearly contemplated that the DSCC would continue in the future to operate its tally program.<sup>1</sup> To do so, however, the DSCC agreed to abide by four of the remedial steps required by the conciliation agreement. First, any contributions that appear earmarked on

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<sup>1</sup> Contrary to the NRSC's suggestion, the conciliation agreement clearly contemplates DSCC's continued use of the tally program. See, e.g., Agreement § IV, ¶ 12 ("DSCC has utilized and utilizes a 'tally' program" (emphasis added)); *Id.* at § V, ¶ 2(c) ("DSCC will utilize standard language in its solicitation pertaining to the tally program") (emphasis added)).



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their face are returned to the contributor. Second, on an ongoing basis, the DSCC has provided education and training to its staff and the staff of its participating campaigns. That training has emphasized that the DSCC does not accept earmarked contributions, that tallied contributions are spent on all DSCC activities and programs as the DSCC determines within its sole discretion, and that campaigns must advise potential DSCC tally contributors about these facts. Third, the DSCC has utilized the standard language that the parties agreed upon in its tally solicitations. Finally, the DSCC has implemented a reasonable procedure to review DSCC and candidate fundraising solicitations for the tally program to ensure that they do not inadvertently solicit earmarked contributions.

Because the DSCC has met each and every one of these obligations, the NRSC's motion should be dismissed.

### III. THE NRSC'S MOTION MISCHARACTERIZES THE DSCC'S TALLY PROGRAM AND THE MUR 3620 CONCILIATION AGREEMENT

The sole issue before the Commission is whether the DSCC abided by the terms and conditions contained in the MUR 3620 conciliation agreement. Therefore, technically, the DSCC is not required to respond to the litany of allegations the NRSC makes with respect to the legality of the tally program. Nor is the DSCC required to defend the activities of Democratic candidates. Nonetheless, because the NRSC's motion is littered with numerous misstatements of fact, erroneous conclusions of law, and, in many instances, plain falsehoods, the DSCC feels compelled to respond on a point-by-point basis to the allegations contained in the NRSC's motion.

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-- On page 1 of the complaint, the NRSC states that "[t]he DSCC is continuing the same illegal earmarking of excessive contributions to Democratic Senate candidates through the 'tally program' it agreed it would cease in the MUR 3620 conciliation agreement."

This statement demonstrates the NRSC's continued mischaracterization of the tally program and the MUR 3620 conciliation agreement. First, as the Commission knows, the tally program is not an earmarking program. In fact, the conciliation agreement states plainly that "[i]t was the DSCC's stated policy and practice to inform contributors that the DSCC did not accept earmarked contributions." (Agreement at § IV, ¶ 16.) To the contrary, the violation in MUR 3620 was that the DSCC failed to treat contributions as earmarked in those few instances where contributors had been confused and thought they were making earmarked contributions.

As the Commission is aware, in support of the DSCC's position it submitted a detailed statistical analysis of the 1992 and 1994 tally program conducted by a nationally recognized Professor of Political Science at Duke University. (The DSCC Tally Program: Recycling or



Electioneering? William T. Bianco (May 22, 1995) (attached at Tab F). ) In his report,

Professor Bianco asks:

In making allocations to candidates, does the DSCC focus on the amount of tally receipts collected by a candidate for the party, or the candidates who tallied more receiving larger allocations (the recycling hypothesis)? Or does the DSCC's allocation strategy reflect a wider range of factors, consistent with the goal of allocating funds so as to preserve the party's incumbent base and elect as many challengers as possible (the electioneering hypothesis)? That is, are DSCC allocations driven by the goal of recycling tally funds, or by the goal of electing candidates to office?

(Bianco at 1.) After conducting a statistical analysis of the tally program's operation in 1992 and 1994, Professor Bianco concludes:

[A]nalyzes of 1992 and 1994 tally and allocation data, with appropriate controls for factors such as the electoral process of different candidates, their ability to raise funds, and the variable cost of campaigning in different states, indicate that the recycling hypothesis is an insufficient explanation of the DSCC's allocation strategy. Rather, consistent with the electioneering hypothesis, DSCC allocations are strongly influenced by political variables, such as the closeness of a race and the cost of campaigning.

(Bianco at 1 (emphasis added).) Thus, Professor Bianco found that the DSCC's tally program is not an earmarking program (what he calls the "recycling hypothesis"). Rather, the DSCC's pattern of allocating funds demonstrates conclusively that the monies it receives are spent to support its political goals of electing candidates to office rather than simply "recycling" the money back to the candidate to whom it was tallied.

-- On page 2 of its complaint, the NRSC alleges, without any support, that the DSCC failed to turn over certain documents to the Commission in response to its subpoena in MUR 3620.

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From the context of the allegation it appears that the NRSC is referring the tally reports that the DSCC periodically sends to candidates. As the General Counsel's office is aware, copies of these reports for the 1992 and 1994 cycles were turned over to the Commission in response to a subpoena issued in MUR 3620. However, pursuant to an agreement reached with regard to that subpoena, those documents were not placed on the public record and, in fact, were returned to the DSCC at the conclusion of the conciliation process.

-- On page 3, the NRSC states "the DSCC continues to use its tally program in the same manner it admitted in MUR 3620 is illegal."

As set forth above, the conciliation agreement in MUR 3620 does not state, in any respect, that the tally program is unlawful. In fact, the agreement specifically states that, so long as the DSCC takes certain remedial steps to assure that its donors understand the tally program, it is perfectly lawful. (See Agreement at § V, ¶ 2(a)-(d).)

-- Also on page 3, the NRSC describes the tally program as "a fundraising mechanism under which contributors to the DSCC can 'tally' their contribution to as single candidate or a group of candidates so that the DSCC will use those funds for its coordinated expenditures on behalf of such candidates."

Once again, the conciliation agreement contradicts the NRSC's suggestion that the tally program is an "earmarking" program. In fact, the "minimum language" agreed to by both the Commission and the DSCC specifically states: "The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be

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spent for DSCC activities and programs as the Committee determines within its sole discretion." (See Agreement at § V, ¶ 2(c).)

Nowhere in the conciliation agreement, or in any other DSCC document, is it suggested that the DSCC will use tallied funds solely for the coordinated expenditures on behalf of the candidates to whom the funds are tallied. In fact, as noted above, the NRSC's contention that the tally program is simply a means by which contributors can earmark their contributions to a particular candidate is completely undermined by Professor Bianco's statistical analysis of the DSCC tally program. In his conclusion, Professor Bianco states "The DSCC's allocation of funds collected through the tally program appears to reflect a political strategy, one directed at preserving the party's incumbents running for reelection and electing as many of the party's challengers to office." (Bianco at 7.)

-- On page 4, the NRSC again argues that the Commission found that "the tally program was nothing more than an elaborate scheme to evade federal contribution limitations by knowingly soliciting or collecting contributions earmarked for specific candidates, and then funneling such funds back to the specific candidates in the form of coordinated expenditures."

In fact, as noted above, the conciliation agreement between the FEC and the DSCC specifically found that DSCC does not earmark contributions for specific candidates. What the conciliation agreement did find was that, on a few occasions, the DSCC had failed to treat as earmarked contributions that contributors had mistakenly believed would be treated as earmarked to a specific candidate. (See Agreement at § V, ¶ 2 ("consistent with its stated policy and practice of not accepting earmarked contributions, the DSCC did not treat such



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tallied contributions as being earmarked for the designated candidate").) This conclusion is supported by the analysis conducted by Professor Bianco, submitted to the FEC, that conclusively found that in fact tally contributions were not "funneled back" to the candidates in the form of coordinated expenditures.

- On page 5, the NRSC states that the DSCC agreed that its tally program solicited earmarked contributions that "were then given to Democratic Senate candidates as coordinated expenditures."

Once again, the NRSC ignores the conciliation agreement, which specifically states that the DSCC does not accept earmarked contributions and that contributions tallied to a particular candidate are used to fund all DSCC activities, including coordinated expenditures. Furthermore, even a cursory review of the correspondence with the FEC regarding the negotiation of the conciliation agreement indicates that the DSCC was not prepared to enter into any agreement that even suggested that the DSCC earmarked contributions to particular candidates through the tally program.

- Also on page 5, the NRSC states that the DSCC "agreed to radically alter its tally program."

What the DSCC agreed to do was to take certain remedial steps to make sure that contributors understood that the DSCC does not accept earmarked contributions. Whatever characterization is given to these changes, it is clear that the DSCC has abided by each of the remedial measures set for the in the conciliation agreement.

- On page 6, the NRSC makes several astounding assertions. First, the NRSC states that in the conciliation agreement the DSCC "promised the Commission

that it would discontinue its illegal tally program activities." The NRSC continues, by calling the DSCC's use of the stipulated disclaimer language "cosmetic" and "overly lawyered." Finally, the NRSC concludes by asserting again that the DSCC is illegally earmarking tallied contributions to specific candidates.

The NRSC's motion is remarkable for its continued ignorance of the plain language of the MUR 3620 conciliation agreement and the fact of the tally program. First, nothing in that agreement suggests that the tally program is "illegal" or that it should be discontinued. To the contrary, the agreement contains specific remedial steps to ensure that the tally program is conducted lawfully in the future. Second, the "overly lawyered" disclaimer language complained of by the NRSC is contained in the conciliation agreement negotiated and signed by the General Counsel of the FEC on behalf of the Commission. Finally, the conciliation agreement specifically did not find that the DSCC had earmarked contributions to a particular candidate. In fact, all the evidence collected by the FEC in MUR 3620, including Professor Bianco's analysis, demonstrated conclusively that the DSCC did not accept earmarked contributions and did not treat the contributions it received from its tally program as earmarked. What the agreement says is that the DSCC failed to treat as earmarked certain contributions that the contributor had mistakenly thought would be treated as earmarked.

-- On pages 7-8 of its motion, the NRSC quotes two letters that purport to be fundraising solicitations by Senator Carl Levin's campaign.

Assuming that these two letters were, in fact, sent to potential contributors, it is clear from their content that they do not violate, or cause the DSCC to violate, the terms of the



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conciliation agreement in MUR 3620. First, it is worth noting that these were not DSCC-initiated solicitations. Since the conciliation agreement only requires the DSCC to utilize the standard language in its solicitations pertaining to tally, the NRSC is incorrect in citing this as an example of the DSCC violating the agreement. In any event, there is nothing in either of these letters that suggests that Senator Levin or his campaign impermissibly solicited earmarked contributions. In fact, both letters include specific statements that the amount of money tallied to the Senator is only one of several factors, including the likelihood of winning and need for DSCC funds that the DSCC considers when making 441a(d) allocations. While phrased slightly differently, this is the precise sentiment embodied in the "standard language" contained in the agreement. Contrary to the suggestion by the NRSC, there is nothing improper with Senator Levin or his campaign asking potential contributors to tally their contributions to him.

-- On page 8, the NRSC discusses April 17, 1995 "call sheets" in which the DSCC encourages Senator Levin to orally solicit contributions for the DSCC.

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The MUR 3620 conciliation agreement states: "The Federal Election Campaign Act of 1971, as amended, does not prohibit party committees from referring to and promoting party candidates in soliciting funds for the committee and candidates may assist party committees in soliciting funds for the committee." (Agreement at § IV, ¶ 11 (emphasis added).) That is precisely what the DSCC asked Senator Levin to do. He was asked to solicit certain donors for contributions to the DSCC. He was also told, correctly, that these contributors could be asked to tally their contributions to Senator Levin. Nothing in these documents suggests any intent to solicit earmarked contributions.<sup>3</sup> Furthermore, nothing in these documents suggests a violation of the agreement.

-- Also on page 9, the NRSC cites four letters from contributors, in which they tallied contributions to Levin.

Contrary to the NRSC's suggestion, none of these letters make any mention of earmarking contributions to the Levin campaign, or even suggest an intent to earmark the contributions. To the contrary, all four of the letters clearly state their intention to tally their contributions to Levin.

-- On pages 9-10, the NRSC notes that the DSCC keeps records of the amount of money tallied to a particular candidate and periodically provides reports to candidates about the amount of money tallied to them.

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<sup>3</sup> In a footnote to this section, the NRSC again falsely accuses the DSCC of having not produced certain materials in response to the Commission's subpoena.

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It is not clear from the motion why the NRSC finds the DSCC's recordkeeping surprising. Nevertheless, these reports obviously come as no surprise to the Commission because similar tally reports were provided to the Commission with regard to the 1992 and 1994 election cycles during the course of the MUR 3620 process. Nor is it surprising that many of the individuals who made contributions to the DSCC also made contributions to Senator Levin's campaign. Indeed, it is typically the case that the DSCC asks candidates to solicit contributions to the DSCC from individuals who otherwise have a good relationship with the candidate. Such behavior is not only protected by the First Amendment, but is specifically approved of in the conciliation agreement. (See Agreement § IV, ¶ 11.)

-- On pages 12-14 the NRSC attempts to create controversy out of a variety of bland documents from the DSCC.

The first document, entitled "Fact Sheet on the 1995 DSCC Annual Senate Dinner" simply informs potential contributors that their contributions to the DSCC "may be tallied to any Democratic U.S. Senator or any 1996 nominee for the U.S. Senate."<sup>4</sup> The NRSC does not make clear in its motion how that statement violates MUR 3620 or is otherwise improper.

Even more desperately, the NRSC next points to a January 10, 1996 Rocky Mountain News editorial that purports to summarize a letter from DSCC Chairman Bob Kerrey to five potential Democratic candidates. Without providing a copy of that letter or quoting it directly, the Rocky Mountain News editorial "summarizes" it as reminding candidates and

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<sup>4</sup> While including the "fact sheet," the NRSC did not attach the invitation or the card containing the required disclaimers -- including the agreed upon tally language.



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contributors "that the money raised for the DSCC can be earmarked right back to the candidates." That characterization of Senator Kerrey's letter is simply inaccurate. In fact, the DSCC letter from Senator Kerrey states explicitly that "[t] money you raise now and throughout 1996 will enable us to fully fund Colorado and our other competitive Senate races around the country." (A copy of the letter is attached at Tab H (emphasis added).) Later in the letter Senator Kerry states that the tallied funds raised "are crucial if the DSCC is to reach its goal of fully funding our Democratic nominees." (Id. (emphasis added).) Senator Kerrey's letter is both accurate and wholly consistent with the MUR 3620 conciliation agreement.

-- On page 13, the NRSC cites a fax cover sheet in which the Wellstone for Senate Campaign informed a potential DSCC contributor that "without something from [the contributor] the DSCC will hold up crediting your check to Paul [Wellstone]." The NRSC juxtaposes this with a January 31, 1996 letter from the contributor who received the fax, in which the contributor instructs the DSCC to tally its contribution to Senator Wellstone.

Far from being incriminatory, the Wellstone fax cover sheet provides concrete proof of the DSCC's vigilance in assuring that contributors were not confused when they made tallied contributions. Since the DSCC entered into the MUR 3620 conciliation agreement, it has been DSCC policy to require some indicia from a contributor, when possible, that indicates that they understand that their contribution to the DSCC is tallied -- rather than earmarked -- to a candidate. Consistent with that policy, the Wellstone campaign properly asked a DSCC contributor to state in writing that his intent was to tally his contribution to Senator Wellstone.

- On page 13, the NRSC cites to a June 25, 1996 letter from a contributor informing the DSCC that he wished to tally his contribution to Senator Levin, Congressman Durbin, Senator Harkin and Senator Kerrey.

The NRSC fails to offer an explanation as to how this perfectly acceptable letter evidences a violation of the conciliation agreement, no less the law.

- Also on page 13, the NRSC notes an August 7, 1996 letter to candidate Mark Warner, in which Senator Kerrey informs Mr. Warner of an upcoming DSCC event.

Other than stating that the event would provide Mr. Warner with an opportunity to raise money on behalf of the DSCC and have it tallied to him, the NRSC does not indicate why this would violate the law or the agreement.

- Finally on page 13, the NRSC quotes, out of context, a statement made by Congressman Dick Durbin about his reluctance to accept money from tobacco interests.

As is clear from the entire text of the article, Congressman Durbin's intent in making this statement was to indicate to the press that he neither solicits money for his own campaign from tobacco interests nor solicits money from tobacco interests for the DSCC. Obviously, such statements by a candidate cannot cause the DSCC to violate the agreement in MUR 4490.

- On page 14, the NRSC cites the fact that the DSCC has not refunded contributions that appear to be earmarked as conclusive evidence that the DSCC has violated the conciliation agreement.



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The DSCC's informal tally enforcement procedure requires that before any tally contribution is deposited in the DSCC's account, it must be clear that it is not earmarked. Thus, under this policy, any check received by the DSCC with an indicia of earmarking is returned -- uncashed -- to the contributor. Because the check is returned to the contributor without first being cashed, there is no reporting requirement under the FECA.

-- Finally, the NRSC's "Discussion" is little more than a rehashing of its flawed arguments regarding the DSCC's compliance with the MUR 3620 conciliation agreement. However, the NRSC does make one allegation that is so outrageous as to require a separate response. On page 24, the NRSC states that "if the DSCC had been complying with [the terms of the agreement] its solicitations and other documents related to the tally program would reflect a clearer understanding of the rules governing earmarked contributions.

As discussed in the next section, the DSCC has abided by the MUR 3620 conciliation agreement in all respects. The records submitted with this brief include memoranda from DSCC counsel to the DSCC fundraising staff and candidates setting forth the legal requirements contained in MUR 3620; copies of several DSCC fundraising solicitations specifically using the required disclaimer language; examples of letters sent by the DSCC accompanying returned checks to contributors that did not demonstrate a clear understanding of the tally program; examples of DSCC personnel reviewing and making changes to campaign tally solicitations; and examples of contributors evidencing a clear understanding of the tally program in transmittal letters accompanying contributions to the DSCC.

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In sum, the record in this case is one of complete compliance by the DSCC with the terms and spirit of the MUR 3620 agreement. The NRSC's charges to the contrary are political in nature and devoid of merit. In order to maintain the integrity of the conciliation process in general, and the conciliation agreement in this case, it is therefore incumbent upon the FEC to swiftly dismiss the NRSC's frivolous motion. In so doing, the FEC should also seriously consider what options are available to the agency to deter such vexatious and harassing behavior by the NRSC in the future.

**IV. THE DSCC DID NOT VIOLATE ANY OF THE TERMS AND CONDITIONS CONTAINED IN THE MUR 3620 CONCILIATION AGREEMENT**

The MUR 3620 conciliation agreement required the DSCC to take four specific remedial steps:

- First, the DSCC agreed that any contribution it received that appeared to be earmarked would be refunded to the contributor.
- Second, the DSCC agreed to provide additional education and training to DSCC staff and the staff of Democratic Senate candidates. Specifically, the DSCC agreed that the training and education would emphasize the fact that (1) the DSCC does not accept contributions that are earmarked for a particular candidate, (2) the tallied contributions are spent for DSCC activities and programs as the Committee determines within its sole discretion, and (3) that contributors must be advised of (1) and (2) above when solicited for contributions.
- Third, the DSCC agreed to utilize standard language in soliciting tally contributions. The DSCC agreed that, at a minimum, the language would state: "The DSCC

does not accept contributions earmarked for a particular candidate. The contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion."

- Finally, the DSCC agreed to implement "reasonable procedures" to review its own fundraising solicitations, as well as the fundraising solicitations of its Democratic Senate candidates, to ensure that those solicitations cannot be reasonably read to solicit earmarked contributions.

Because the DSCC complied with each and every one of these requirements, the NRSC's motion should be dismissed immediately.

**A. The DSCC Complied with the MUR 3620 Conciliation Agreement by Returning Any Contribution that Appeared To Be Earmarked**

Under the terms of the conciliation agreement, the DSCC agreed to refund any contributions that appeared to be earmarked to a particular candidate. In fact, in order to abide by this requirement, the DSCC went further than required by the agreement. Rather than depositing such contributions and then later refunding them to the contributor, the DSCC initiated a policy that no contribution that bore indicia of earmarking would be accepted or deposited by the DSCC. Under this new, stricter policy, for example, any check that includes a memo line note bearing the name of the candidate is returned, uncashed, unless the check is accompanied by something that clearly indicates that the contributor understands the tally program and does not intend the contribution to be earmarked.

This new policy was explained to all DSCC fundraising staff and Democratic Senate candidates both orally and in writing. For example, at the beginning of the "tally" cycle, in



April 1996, DSCC counsel drafted and circulated memoranda to both DSCC and candidate fundraising staff that clearly and plainly spelled out the requirements of the tally program. (Copies of the memoranda distributed to DSCC and candidate staff are attached at Tabs I and J, respectively.) These memoranda were distributed to all DSCC and candidate fundraisers. Among other things, the memo to DSCC staff stated:

Any contribution that is received by the DSCC that appears to be earmarked to a particular candidate must be returned. In past cycles, those contributions were deposited and a form letter was sent to the contributor. This is no longer acceptable. Any check that bears the name of a candidate, including a memo line note such as "tally to \_\_\_\_\_" or "for \_\_\_\_\_" must be returned unless it is accompanied by a properly worded letter or response card, signed by the contributor, that indicates that the donor understands the tally program[]. The returned check may be accompanied by a proper solicitation for a new contribution.

(DSCC Memo at 1 (emphasis in original) )

The memorandum sent to 1996 Democratic Senate candidates stated the same point slightly differently:

Tally is not an earmarking program; indeed, the DSCC does not accept earmarked contributions. Therefore, any contribution that is received by the DSCC that appears to be earmarked to a particular candidate will be returned. Any check that bears the name of a candidate, including a memo line note such as "tally to \_\_\_\_\_" or "for \_\_\_\_\_" would be returned unless it is accompanied by a signed and properly worded letter or response card that indicates that the donor understands the tally program[]. The returned check may be accompanied by a proper solicitation for a new contribution.

(Candidate Memo at 1 (emphasis in original).)

Under this new policy, the DSCC and its candidates have returned numerous checks to contributors. Even checks that otherwise do not appear earmarked are returned if they include the name of a candidate on the face of the check. While such steps are not required by

the conciliation agreement, they represent the DSCC's best efforts to ensure that no earmarked contributions are accepted by the DSCC. To demonstrate the DSCC's commitment to this requirement of the conciliation agreement, we have attached, for your review, three examples of letters that the DSCC has sent to contributors returning their checks.<sup>5</sup> (Attached at Tabs K, L and M.) You will note that in each instance, the check was returned for nothing more than having the name of a Senator in the memo line. In each of these instances the DSCC clearly explained its policy of not accepting earmarked contributions. For example, the letter dated February 8, 1996 states, "in order to avoid any misperception concerning the intent of your contribution, I am returning your check." The letter also makes clear that if the contributor wishes to give money to the campaign of the candidate in question, he should do so directly. There is no question that DSCC's policy of returning contributions more than meets its obligations under the conciliation agreement.

**B. The DSCC Has Provided the Education and Training Required in the MUR 3620 Conciliation Agreement**

Under the terms of the MUR 3620 conciliation agreement, the DSCC agreed, on an ongoing basis:

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<sup>5</sup> Several days after filing the instant motion, the NRSC filed a new administrative complaint against the DSCC, a number of its Senate candidates, and potentially all of DSCC tally contributors. NRSC chose to make a respondent in that suit literally every contributor that has tallied a contribution in the 1996 election cycle in an obvious attempt to immobilize DSCC supporters. The Commission, in turn, treated as potential respondents those contributors identified in their complaint. DSCC, however, is concerned with the protection of the interests of its supporters, and avoiding their harassment in relation to their participation in tally. Thus, this letter, as well as all others that identify a particular contributor who is not already named in MUR 4490, has been redacted to delete identifying information.



[To] provide additional education and training to DSCC staff and participants in the tally program, including the staff of Democratic Senate candidates, which will emphasize that: (1) DSCC does not accept contributions earmarked for a particular candidate; (2) tallied contributions will be spent for DSCC activities and programs as the committee determines within its sole discretion; and (3) contributors must be advised of (1) and (2) above when the DSCC and tally program participants solicit tallied contributions.

(Agreement at § V, ¶ 2(b).)

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The DSCC has more than fulfilled the requirements of this provision. On several occasions DSCC's outside counsel have conducted both in person seminars and conference calls with DSCC staff and Senate campaign staff regarding the requirements of the tally program. In addition, DSCC's outside counsel regularly consults with the DSCC's own fundraising staff as well as its candidates fundraisers to answer any questions that may arise regarding the tally program. Finally, as noted above, the DSCC has distributed memoranda from its outside counsel setting forth, in clear plain language, the requirements of the tally program. (See Tabs I and J.) Among other things explained in those memoranda, fundraising staff are told that "[w]e must tell our candidates and contributors that the DSCC does not accept earmarked contributions and that tallied contributions are spent for DSCC activities and programs as the Committee determines within its sole discretion." (DSCC Memo at 1.) As discussed in greater detail in the next section, the DSCC regularly incorporates specific language that instructs its contributors that tallied contributions are spent for DSCC activities and programs as the DSCC determines within its sole discretion in all of its solicitations. Furthermore, as set forth below, DSCC staff make every effort to see that fundraising

solicitations sent by individual Senate campaigns incorporate either the same exact language as used by the DSCC or, at a minimum, language that conveys the same message.

In addition, the DSCC regularly distributes to contributors who are uncertain about the nature of the tally program a standard written explanation of the program. (Attached at Tab N.) Among other things, this explanation states:

DSCC funds are allocated to targeted Democratic Senate candidates by the Allocation Committee of the DSCC. This committee sets the DSCC allocation policies at its discretion. In allocating funds to candidates, many factors are considered by the DSCC's Senate Allocation Committee such as need, winability, latest polling figures, finances on hand and the amount of funds tallied to the DSCC for that specific candidate. The DSCC maintains a record (a "Tally") of how much money each candidate helps to raise for the Committee. The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent to DSCC activities and programs as the Committee determines within its sole discretion.

(Id. (emphasis in original).)

In light of all of this evidence, there is no question that the DSCC has exceeded its obligation under the conciliation agreement to train and educate its own staff, the staff of its Senate candidates, and to accurately portray the tally program to its contributors.

**C. The DSCC Has Utilized the Standard Language Agreed Upon in the MUR 3620 Conciliation Agreement**

In the conciliation agreement, the parties agreed that, in order to assure that there was no confusion on the part of contributors in the future, the DSCC would include the following language in its written tally solicitations: "(1) DSCC does not accept contributions earmarked for a particular candidate; (2) tallied contributions will be spent for DSCC activities and

programs as the committee determines within its sole discretion." (Agreement at § V, ¶ 2(c).)

Consistent with this requirement, DSCC fundraising staff were explicitly instructed that:

All tally solicitations by the DSCC, its candidates and agents must include the following language:

The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the committee determines within its sole discretion.

(DSCC Memo at 2 (emphasis in original).)

The same "standard language" was provided to Senate campaigns in a memorandum addressed to them. (Candidate Memo at 2.) What is most notable about the NRSC's complaint is that despite all of its rhetoric, it fails to cite a single instance in which the DSCC failed to abide by this, or any other, requirement of the conciliation agreement. Indeed, the invitation attached by the NRSC as an example of the DSCC's noncompliance proves the opposite. Exhibit 5 to the NRSC's motion is an invitation to a "Take Back the Senate Dinner." Clearly included in that invitation package is the following text, as its own paragraph:

The DSCC maintains a record (a "Tally") of how much money each candidate helps raise for the Committee. The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

This "tally disclaimer" is set out as its own paragraph, in the same size type and typeface, directly above the other disclaimers required by federal law. For your review, the DSCC has attached several other invitations from this election cycle that similarly contain the required disclaimer language. (Attached at Tabs O, P, Q and R.) In all instances, the required



tally explanation appears in the same size font and in the same location as other important and pertinent information.

**D. The DSCC Has Implemented Reasonable Procedures To Review Its Own Fundraising Solicitations as Well as the Fundraising Solicitations of Its Democratic Senate Candidates**

Finally, the conciliation agreement in MUR 3620 required the DSCC to implement "reasonable procedures" to review its own fundraising solicitations as well as its the fundraising solicitations of its Democratic Senate candidates. Like the others contained in the agreement, the DSCC has more than adequately met this requirement. As with the other requirements, DSCC's legal counsel circulated a memorandum to all DSCC fundraising staff as well as all campaign fundraising staff that specifically states that "the DSCC should review tally fundraising solicitations, when possible, to make sure they comply with the requirements [of the conciliation agreement]." (DSCC Memo at 2 (emphasis in original).)

The fact that the DSCC has reviewed its own solicitations is evidenced by the inclusion of the standard language in all DSCC-initiated solicitations. The DSCC has also made significant efforts to review campaign tally solicitations to ensure that they, too, abide by the agreement's requirements. Attached is one recent example of a fax cover sheet, marked-up invitation, and tally solicitation for candidate Dick Durbin's campaign. (Attached at Tab S.) The Commission will note, among other things, that the DSCC employee reviewing this solicitation stated: "If you want to add the 'tally' option - you must also include the language attached - (see \*) in place noted." The language that the DSCC employee had indicated must be included in the solicitation is marked in the document and reads as follows:

The DSCC does not accept contributions earmarked for a particular candidate. The DSCC maintains a record ('tally') of how much money each candidate helps raise for the Committee. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

The Commission should also note that the DSCC employee concludes her note to the campaign by instructing the campaign to fax a revised version of the invitation back to the DSCC so that it could be reviewed by the DSCC's counsel for compliance with the tally conciliation agreement. This type of careful review of candidate solicitations is the DSCC's standard policy. Furthermore, as indicated by the facsimile cover sheet, it is also DSCC's policy for all such solicitations to be reviewed by counsel if there is any question as to whether or not the solicitation comports with the requirements of the conciliation agreement.

#### **IV. THE DSCC'S COMPLIANCE WITH THE TERMS OF THE MUR 3620 CONCILIATION AGREEMENT HAS, IN FACT, DIMINISHED CONTRIBUTOR CONFUSION**

Finally, it is worth noting that the DSCC's vigorous efforts to comply with the letter and spirit of the MUR 3620 conciliation agreement have had a real effect on educating DSCC contributors. As noted above, checks that bear an indicia of earmarking are returned to contributors with an explanation that the DSCC does not accept earmarked contributions as well as a fuller explanation of what the tally program is. (See Tabs K, L and M.)

Contributors are then given an opportunity to make a new contribution to the DSCC. If they do, they must indicate in some form that they understand the tally program as it has been explained to them. Enclosed for the Commission's consideration are only a few of the many letters received by the DSCC that indicate a clear understanding of the tally program.

(Attached at Tabs T, U, V, W, X, Y and Z.) For example:



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- In a September 27 transmittal letter tallying \$15,000 a contributor states "I am enclosing some tally sheet requests, which, of course, I understand are subject to the discretion of the Democratic Senatorial Campaign Committee." (Tab X.)

- A September 12, 1996 transmittal letter to the DSCC asks that a \$20,000 contribution to the DSCC be tallied to Senator Barbara Boxer states explicitly that the contributor understands the DSCC tally program as it has been explained to them in the following way:

Tally is not an earmarking program, and the DSCC does not accept earmarked contributions. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

(Tab W.)

- A similar letter dated June 21, 1996 accompanied a \$19,000 contribution to the DSCC that was tallied in the name of Bob Toricelli. (Tab V.) That letter also stated explicitly that the contributor understood that "the DSCC does not accept contributions earmarked for a particular candidate." Id. The contributor further stated that he understood that "Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion." (Id.)

In sum, these examples clearly demonstrate that the DSCC's contributor base understands the tally program because the DSCC and its candidates have made an effort to educate them as to what the tally program is, and as importantly, what it is not. Unlike the NRSC, DSCC contributors understand that the tally program is not an earmarking program; but rather, a way in which DSCC contributors can indicate their support for a candidate.

V. CONCLUSION

The NRSC has failed to provide any evidence that the DSCC has not lived up to any aspect of the MUR 3620 conciliation agreement. To the contrary, many of the documents provided by the NRSC in support of its motion only served to prove that the DSCC has complied with that agreement. It is clear that in this election year the NRSC has committed an abuse of the FEC complaint process. The Commission should act expeditiously to dismiss the NRSC's motion.

Respectfully submitted,



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Attorneys for  
Democratic Senatorial Campaign Committee

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
Democratic Senatorial )  
Campaign Committee and )  
Donald J. Foley, as )  
treasurer )  
Abrams Committee, f/k/a )  
Abrams '92 and Lawrence B. )  
Buttenwieser, as treasurer )  
Feinstein for Senate '94 and )  
Michael J. Barrett, as )  
treasurer )  
Sanford for Senate )  
Committee and Alton G. )  
Buck, as treasurer )

MUR 3620

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

AUG 16 11 44 AM '96

CONCILIATION AGREEMENT

This matter was initiated by signed, sworn, and notarized complaints by the National Republican Senatorial Committee and the John Seymour for U.S. Senate Committee. The Federal Election Commission ("Commission") found reason to believe the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, ("DSCC" or "Respondents") violated 2 U.S.C. § 441a(a)(8); 11 C.F.R. § 102.8; 11 C.F.R. § 110.6(b)(2)(iii); and 11 C.F.R. § 110.6(c)(1). The Commission also found reason to believe that the Abrams Committee, f/k/a Abrams '92, and Lawrence B. Buttenwieser, as treasurer; Feinstein for Senate '94, and Michael J. Barrett, as treasurer; and Sanford for Senate Committee, and Alton G. Buck, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.6(c)(2).



NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C.

§ 437g(a)(4)(A)(i).

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. The Democratic Senatorial Campaign Committee is a national committee within the meaning of 2 U.S.C. § 431(14).

2. Donald J. Foley is treasurer of the Democratic Senatorial Campaign Committee.

3. A contribution made by a person, either directly or indirectly, on behalf of a particular candidate, which is in any way earmarked or otherwise directed through an intermediary or conduit, shall be treated as a contribution from such person to such candidate. 2 U.S.C. § 441a(a)(8).

4. Earmarked is defined as a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.

11 C.F.R. § 110.6(b)(1).

5. A conduit or intermediary means any person (except for a few limited exceptions not applicable to this matter) who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee. 11 C.F.R. § 110.6(b)(2).

6. 11 C.F.R. § 110.6(b)(2)(iii) provides that any person who receives an earmarked contribution shall, among other requirements, forward such earmarked contribution to the candidate or authorized committee in accordance with 11 C.F.R. § 102.8.

7. Section 102.8 provides, inter alia, that earmarked contributions must be forwarded no later than 10 days after receipt.

8. Pursuant to 2 U.S.C. § 441a(a)(8), the intermediary or conduit of an earmarked contribution must report the source of the contribution and the intended recipient to the Federal Election Commission and to the intended recipient. See also, 11 C.F.R. § 110.6(c)(1).

9. Recipient candidates or candidate committees must report earmarked contributions and each conduit or intermediary, who forwards one or more earmarked contributions which in the aggregate exceed \$200 in any calendar year in accordance with 11 C.F.R. § 110.6(c)(2).

10. The national committee of a political party may make expenditures in connection with the general election campaign of a candidate for the office of Senator or of a Representative from a state which is entitled to only one Representative that equals the greater of two cents multiplied by the voting age population of the state, or \$20,000. 2 U.S.C. § 441a(d); 11 C.F.R. § 110.7(b).



11. The Federal Election Campaign Act of 1971, as amended, (the "Act") does not prohibit party committees from referring to and promoting party candidates in soliciting funds for the committee and candidates may assist party committees in soliciting funds for the committee.

12. The DSCC has utilized and utilizes a "tally" program as a means of raising funds on behalf of Democratic senate candidates. Tallied funds are used in part to fund coordinated party expenditures pursuant to 2 U.S.C. § 441a(d) as well as other DSCC activities on behalf of its candidates.

13. Under this program a contributor has the option to "tally" a contribution to the DSCC in the name of a particular candidate, thereby expressing support for that candidate or crediting the candidate with the raising of the contribution for the DSCC's "coordinated expenditure" program and other activities.

14. As part of the tally program, the DSCC and the candidate committees produced and distributed fundraising solicitations requesting contributions be sent to the DSCC and indicating that the contributors can tally their contributions to a specific candidate.

15. Some of these solicitations can be fairly read to solicit earmarked contributions and did not contain further clarification and explanation to avoid such a reading; the following examples are illustrative:

a. "For those of you who have already maxed out to my campaign, the DSCC tally is an avenue through which you can offer more support";

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b. "[My] race will be close: the tally sheet will be of vital importance";

c. "As an individual, you can contribute up to \$1,000 directly to my committee. Contributions in excess of \$1,000 must be made payable to the DSCC and marked for my tally";

d. "You can tally your [DSCC] membership to [\_\_]'s campaign. This means that those dollars will go to [\_\_]'s effort";

e. The response card to a request from a candidate's committee to serve on the host committee for a fundraiser on behalf of the candidate, which provided no explanation of the DSCC's tally program, read as follows:

Please reserve a space in my name on the invitation as a Benefactor -- enclosed is my check for \$5,000 (payable to the "Democratic Senatorial Campaign Committee" marked for [\_\_]'s tally) or I pledge to raise \$5,000. Patron -- enclosed is my check for \$2,500 (payable to the "Democratic Senatorial Campaign Committee" marked for [\_\_]'s tally) or I pledge to raise \$2,500. Sponsor -- enclosed is my check for \$1,000 (payable to "[\_\_] for Senate") or I pledge to raise \$1,000;

f. "I must raise an additional \$4 million dollars over the next few weeks. . . . I am counting on you to help me pull it off. If you and [\_\_] have any room to make additional federal contributions, I would be grateful if you could tally money to the DSCC for this effort to defeat [my opponent]";

g. "If you could make a \$2,000 contribution to [my committee] and a \$10,000 contribution to the DSCC for this effort to defeat [my opponent], it would be one of the building blocks of my campaign";

h. "If you choose to contribute through the DSCC, it is very important that you enclose a letter with your contribution indicating that it is meant for [my tally]. I hope you will consider this as our campaign really needs the support".

16. It was the DSCC's stated policy and practice to inform contributors that the DSCC did not accept earmarked contributions, that the amount of tallied contributions was a significant factor that the DSCC took into account in deciding the amount of 441a(d) expenditures to be made on behalf of a particular candidate, and that the DSCC retained final discretion regarding the use of any tallied contribution. The DSCC acknowledges that this information was not always conveyed to contributors.

17. Some percentage of contributors who responded to these "tally" solicitations earmarked their contributions to the DSCC on behalf of a particular candidate.

18. During the 1992 cycle, the DSCC raised approximately \$8,500,000 in tallied funds. During the 1994 cycle, the DSCC raised approximately \$11,000,000 in tallied funds. The Commission is not taking the position that all tallied contributions were earmarked, but, without conducting a full investigation, the percentage of contributors who intended that their tallied contributions be earmarked cannot be determined.



19. The Commission acknowledges that the DSCC may not have intended to solicit earmarked contributions.

20. The tallied contributions that were earmarked for a designated candidate were not treated as earmarked by the DSCC, viz. forwarded to the recipient candidate committees within 10 days, reported as earmarked by the conduit and recipient, and applied to each contributor's limit to the candidate committee's campaign.

V. Because the parties desire an expeditious resolution of this matter, the parties enter into this conciliation agreement prior to the Commission completing its investigation. The parties agree that --

1. The DSCC and certain of its candidates prepared and distributed fundraising solicitations for the DSCC's tally program which can be fairly and reasonably read to mean that contributions would be earmarked for a particular candidate within the meaning of 2 U.S.C. § 441a(a)(8). In response to these solicitations, some contributors earmarked their contributions to the DSCC for a particular candidate.

2. Consistent with its stated policy and practice of not accepting earmarked contributions, the DSCC did not treat such tallied contributions as being earmarked for the designated candidate. When a contribution has been earmarked by a contributor for a particular candidate, a political committee receiving the contribution must follow the requirements of the Act, which the DSCC did not do in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 102.8, 110.6(b)(2)(iii) and

110.6(c)(1). Some of the funds received by the candidate committees as coordinated party expenditures from the DSCC were earmarked contributions which the DSCC, inter alia, failed to report as earmarked contributions and the candidate committees, in turn, did not report as earmarked contributions, in violation of 11 C.F.R. § 110.6(c)(2).

3. The parties agree that the solicitations could have been clarified to avoid soliciting earmarked contributions by additional DSCC efforts to assure that its staff and the candidate committees had a better understanding of the tally program and communicated this understanding more effectively to donors when soliciting for the DSCC's tally program.

VI. 1. DSCC will pay a civil penalty to the Commission in the amount of seventy-five thousand dollars (\$75,000), pursuant to 2 U.S.C. § 437g(a)(5)(A); such penalty to be paid as follows:

a. An initial payment of \$25,000 due within 30 days after the effective date of this conciliation agreement.

b. Thereafter, two consecutive monthly installment payments of \$25,000 each, due 60 and 90 days after the effective date of this conciliation agreement.

c. In the event that any installment payment is not received by the Commission by the fifth day after it becomes due, the Commission may, at its discretion, accelerate the remaining payments and cause the entire amount to become due upon ten days written notice to the DSCC. Failure by the Commission to



accelerate the payments with regard to any overdue installment shall not be construed as a waiver of its right to do so with regard to future overdue installments.

2. The DSCC agrees to implement the following remedial steps.

a. For contributions to the DSCC that appear to be earmarked, the DSCC will refund the contributions or forward the contributions to the designated candidate, in accordance with 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 102.8, 110.6(b)(2)(iii), and 110.6(c)(1).

b. On an on-going basis, the DSCC will provide additional education and training to DSCC staff and participants in the tally program, including the staff of Democratic senate candidates, which will emphasize that: (1) DSCC does not accept contributions earmarked for a particular candidate; (2) tallied contributions will be spent for DSCC activities and programs as the Committee determines within its sole discretion; and (3) contributors must be advised of (1) and (2) above when the DSCC and tally program participants solicit tallied contributions.

c. The DSCC will utilize standard language in its solicitations pertaining to the tally program and, as part of its education and training, will instruct its tally participants to include this language in solicitations distributed by such candidates, their committees and their agents. This language will provide, in substance, that the DSCC does not accept contributions earmarked for a particular candidate and that tallied

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contributions will be used as the DSCC determines in its sole discretion. At a minimum, the language will state that:

The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

d. The DSCC will implement reasonable procedures to review DSCC and Democratic Senate candidate fundraising solicitations pertaining to the tally program to ensure that the solicitations cannot be reasonably read to solicit earmarked contributions, in accordance with the requirements of Section VI(2)(b)-(c) of this agreement.

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. Except as provided in Section VI, paragraph (1)(b)-(c), Respondents shall have no more than 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 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 (LQ2)  
Lawrence M. Noble  
General Counsel

8-21-95  
Date

FOR THE RESPONDENTS:

Robert F. Bauer  
Robert F. Bauer  
Counsel to Democratic  
Senatorial Campaign Committee

8-11-95  
Date

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The DSCC Tally Program:  
Recycling or Electioneering?

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This analysis uses statistical techniques to examine the strategy used by the Democratic Senatorial Campaign Committee (DSCC) in its allocations of funds to senate candidates in the 1992 and 1994 elections. In particular, it focuses on the allocations of funds that are a part of the DSCC's tally program -- that is, contributions to the party that were generated through the efforts of individual candidates. The question is: in making allocations to candidates, did the DSCC focus on the amount of tally receipts collected by a candidate for the party, with candidates who tallied more receiving larger allocations (the recycling hypothesis)? Or does the DSCC's allocation strategy reflect a wider range of factors, consistent with the goal of allocating funds so as to preserve the party's incumbent base and elect as many challengers as possible (the electioneering hypothesis)? That is, are DSCC allocations driven by the goal of recycling tally funds, or by the goal of electing candidates to office?

Evaluating these hypotheses is not an easy task, owing to the small number of cases available for analysis (35 each in 1992 and 1994) and the FEC-mandated state-by-state limits on DSCC allocations. Nevertheless, analyses of 1992 and 1994 tally and allocation data, with appropriate controls for factors such as the electoral prospects of different candidates, their ability to raise funds, and the variable cost of campaigning in different states, indicate that the recycling hypothesis is an insufficient explanation of the DSCC's allocation strategy. Rather, consistent with the electioneering hypotheses, DSCC allocations are strongly influenced by political variables, such as the closeness of a race and the cost of campaigning.

This paper proceeds as follows. First it describe the recycling and electioneering hypotheses, noting, where appropriate, the differences in their predictions concerning variation in tally receipts and in DSCC allocations across candidates. It then turns to a critical test of these predictions using various multivariate statistical techniques, including maximum likelihood estimation, followed by an interpretation of the results and a brief conclusion. (The technical details of these estimations, along with the parameter estimates, are in Appendix One.)

### **The Two Hypotheses: Predictions about Allocation and Tallying**

This section sets out the two hypotheses, recycling and electioneering, that frame later analysis of tallying and allocation. In essence, each hypothesis is a claim about the motives that underlie the DSCC's allocations to candidates running under the party label. In addition, predictions are made about the pattern of tally receipts and allocations that would be observed if a given hypothesis were true. The central goal of the analysis presented later is to test these predictions and determine which if any are true.

#### **The Recycling Hypothesis**

The essence of the recycling hypothesis is simple. By law, individuals are severely limited in the amount of money they can contribute directly to a senate candidate. However, the limits for contributions to a party committee such as the DSCC are much higher. Moreover, while the DSCC is limited by law in the amounts it can contribute to a senate candidate, these limits are far higher than those faced by individual contributors. Hence, it is logically possible that the DSCC could function as a mechanism for contributors to bypass the limits on individual contributions. This result would arise if the DSCC kept track of how much individual candidates raised for the committee through the tally program, then returned tallied contributions to the candidates who helped to raise them. Contributors would be writing a check to the party, but they would be in effect helping their favored candidate get elected.

Two predictions, one dealing with allocations and one with tally receipts, follow from



the recycling hypothesis. To begin with, if the recycling hypothesis is true, a candidate's allocation should be closely related to his or her tally receipts. That is, candidates who tallied extensively should receive large allocations, while candidates who tallied relatively smaller amounts (for whatever reason) should receive smaller allocations. More specifically, the recycling hypothesis implies that a candidate's allocation from the DSCC should equal 100 percent of his or her tally, consistent with the notion that the DSCC keeps records on the amount of tallied funds raised by each candidate, then eventually returns these contributions to the candidate who raised them in the form of coordinated spending.<sup>1</sup>

The second prediction concerns candidates' propensity to raise tally funds. Specifically, if the DSCC returned 100 percent of tally receipts to the candidates who helped to raise them, and if this policy were common knowledge (which seems a trivial assumption), then candidates would have considerable incentive to work at generating tally contributions -- the same effort that would produce a relatively small direct contribution could instead be directed at generating a much larger indirect contribution via the tally program. The only limit would be the state-by-state limits on the amount of funds that the DSCC can allocate to candidates. Of course, candidates who are running pro forma campaigns, either because their victory was certain or because they had no chance to win, would not be expected to tally much in any case. But consider candidates locked in close races: they need all the help they can get. Thus, if the recycling hypothesis was true, we would expect that tally receipts would track state allocation limits -- if, say, a state's limit was one million dollars, we would expect the party's candidate from that state, if he or she was in a tight race, to tally roughly that amount. Moreover, we would expect candidates in noncompetitive races to tally virtually nothing at all. And if some tallying is observed from incumbents in the latter group, the amount should be unrelated to their state's allocation limit.

### The Electioneering Hypothesis

The electioneering hypothesis builds on the conventional wisdom on senate elections and the role that contemporary party organizations play in these elections (e.g., Jacobson 1993). The premise of this literature is that the party organizations are purposive actors whose campaign-relevant decisions are a function of two factors, (a) the party's goals and (b) political context, or the electoral prospects of the party's candidates. Simply put, party organizations are expected to focus their efforts -- and their allocations -- on maintaining and increasing the party's cohort in Congress by protecting incumbents and aiding the campaigns of competitive challengers running under the party's banner.

Specifically, the electioneering hypothesis posits that large allocations will be given to two classes of candidates: incumbents who have some significant chance of losing their seat, and challengers with a good chance of either unseating their opponent or of winning an open seat. The remaining types of candidates, incumbents in safe races and challengers with little or no chance of winning, will receive low or no allocations -- safe incumbents do not need funds from the party in order to run a winning campaign, while hopeless challengers are nearly certain to lose no matter what the party does for them. Moreover, allocations will be shaped by the cost of campaigning in different states: looking only at incumbents and challengers running in

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<sup>1</sup> The reader may question the specifics of this prediction, arguing that it is also possible to construct modified versions of the recycling hypothesis in which a lower level of tallies, say 50 percent, was recycled back to candidates, with the remainder reserved for allocations based on political considerations. This possibility is addressed and refuted in later analysis.

competitive campaigns, candidates in states where the cost of campaigning is high will receive larger allocations than candidates in states where the cost of campaigning is low.

Just as with the recycling hypothesis, the electioneering hypothesis implies specific patterns of allocation as well as variation in tally receipts across candidates. To begin with, if the electioneering hypothesis is correct, we should expect to see a candidate's allocation vary with the political variables discussed above.<sup>2</sup> Targeted candidates (incumbents who might lose, challengers who might win) will receive larger allocations than untargeted candidates; within the set of targeted candidates, allocations also vary as a function of the cost of campaigning. (Recall that the recycling hypothesis implies that a candidate's allocation will vary with the size of his or her tally receipts, with no weight attached to political variables.)

The electioneering hypothesis also predicts systematic variation in tally receipts. Specifically, a candidate's tally receipts should vary with his or her campaign prospects and ability to attract campaign contributions. Candidates with relatively poor chances have little incentive to raise funds for the party -- all their efforts will be focused on their own campaigns. Thus, the electioneering hypothesis implies that targeted candidates (incumbents who might lose, challengers who might win) will tally more funds than candidates whose chances are poor as well as more than safe incumbents. However, given the scholarly literature's emphasis on the idea that party organizations work to increase the size of the party's cohort in Congress, the electioneering hypothesis predicts that safe incumbents will tally at a higher rate compared to hopeless challengers, with the expectation that these receipts will be redistributed to targeted candidates. Finally, holding prospects constant, a targeted candidate's ability to generate tally funds should vary with her overall ability to raise funds for her own campaign. (In contrast, the recycling hypothesis posits that the amount of funds tallied by a candidate will vary principally with her state's allocation limit.)

### Analysis and Results

This section presents the results of statistical analysis of the DSCC's tally program for the 1992 and 1994 elections. The technical details of the analysis, including model specifications, variable definitions, estimation techniques, and parameter estimates, are all contained in Appendix 1. This section focuses on interpreting the results of the analysis.

#### Political Factors in the Allocation Process

As noted in the Appendix, the results of statistical analysis of DSCC allocations (as shown in Table One) provides considerable support for the electioneering hypothesis. However, the raw parameter estimates do not by themselves disprove the recycling hypothesis. Additional interpretation of these estimates presented in this section allows a more definitive conclusion, one in favor of the electioneering hypothesis.

Given the form of the recycling hypothesis, one obvious way to interpret the raw

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<sup>2</sup> In addition, as noted in the Appendix, because of data limitations it would be no surprise to find (as later analysis does) a positive relationship between allocations and tally receipts, even if the electioneering hypothesis was true and the recycling hypothesis false. Thus, the critical test between the two hypotheses, recycling and electioneering, lies in a determination of the extent to which political variables played a significant role in determining the allocation of DSCC funds.



estimates in Table One is to plot the maximum and minimum predicted allocations to a candidate as a function of his or her tally receipts. The "Max. Predicted" line shows what the party would give to a candidate who really needs the money and could use it to good effect -- in substantive terms, such a candidate hails from a state where the cost of campaigning is high and is locked in a tight race with his or her opponent. Conversely, the "Min. Predicted" line shows the party's allocation to a candidate who does not need the money -- because he or she is well ahead or hopelessly behind, and in a state with low campaign costs. According to the electioneering hypothesis, there should be considerable distance between the maximum and minimum lines, reflecting the fact that the DSCC's allocation to a candidate varies with the political situation in the candidate's race rather than with his or her tally.<sup>3</sup> In contrast, the recycling hypothesis predicts that the maximum and minimum lines should be close together, and centered on 100 percent -- that is, a candidate's allocation should be a simple reflection of his or her tally, with 100 percent of tally receipts being recycled into an allocation.

The maximum and minimum predicted allocations derived from table one are plotted in figure one for candidates in the 1992 election cycle. A dotted line at 100 percent is added for clarity. (Recall that if the recycling hypothesis is correct, the maximum and minimum predicted allocations should be close to this line.) The plots show that allocations vary the most for low values of tallying, then move closer together (but remain substantially apart) at higher levels of tallying.<sup>4</sup> For example, the analysis reveals that for a candidate who tallied \$250,000, the DSCC's predicted allocation will be between 60 percent and 450 percent of this amount. (This prediction can be seen by looking upward from between the "200" and "300" tick marks on the x-axis of figure one, to the points on the maximum and minimum lines, then over to the y-axis. Note that the scale on the y-axis, measuring the maximum and minimum allocations, is a logarithmic scale.) Similarly, given a candidate who tallied \$1,000,000, the DSCC's predicted

<sup>3</sup> In theory, the min. predicted line for allocations should stay at or near zero regardless of a candidate's tally receipts. However, this plot lies substantially over zero in figures one and two. While it is reasonable to expect that the minimum level of DSCC allocations to a candidate would be zero, two factors combine to raise the min. predicted line over the zero level in our analysis. The first is difficulties involved with measuring a candidate's election prospects. While the analysis uses a well-known and well-accepted measure developed by *Congressional Quarterly*, the discrete nature of this variable undoubtedly omits some of the variation in electoral prospects -- variation which the estimation technique could well attribute to the tally variable in the equation that estimates the DSCC's allocations to a candidate. The second factor is that a candidate's tally receipts may themselves function as a signal of her electoral prospects. For both of these reasons, it is no surprise to find a nonzero min. predicted line. This anomaly presents no problem for the results discussed here, as the fact that the min. and max. predicted lines lie substantially apart in figures one and two is sufficient to support the electioneering hypothesis and refute the recycling hypothesis. In fact, if it were possible to control for the factors noted here, the revised analysis would generate a min. predicted line that was lower than the one shown here, increasing the distance between the max. predicted and min. predicted line, and further supporting the electioneering hypothesis.

<sup>4</sup> The fact that the lines are so far apart at low levels of tallying is no surprise given the electioneering hypothesis: a good candidate who was unsuccessful at tallying will still receive a substantial allocation from the DSCC. At higher levels of tallying, however, the same allocation to the same top-flight candidate is a lower percentage of the (larger) amount tallied. Again, this pattern is precisely what would be expected given the electioneering hypothesis was true and the recycling hypothesis was false.

allocation is between 60 percent and 200 percent of this amount.

Figure one reveals strong evidence in favor of the electioneering hypothesis. In general, for any level of tallying, there is a wide range of predicted allocations, some far from 100 percent of tally receipts. Depending on their situation, candidates may receive more than 100 percent of their tally receipts from the DSCC, but on the other hand, they may receive substantially less. Clearly, the DSCC's allocation strategy is not one of simple recycling. Rather, the DSCC's allocation decisions appear to be driven by political factors such as candidates' electoral prospects and variation in the costs of campaigning across states.

Figure two repeats this presentation of results for the 1994 election cycle. While the precise shape of the maximum and minimum predicted allocation lines differ somewhat from those derived from the 1992 data, the basic message is the same: allocations can vary widely as a function of political context, but there is no tendency for the allocation lines to cluster near 100 percent, the value predicted by the recycling hypothesis.

The reader may question the conclusion drawn from figures one and two, arguing that the analysis has pitted the electioneering hypothesis against a relatively extreme alternate scenario, one where all tally contributions are recycled back to the candidates who raised them (i.e., the recycling hypothesis). Specifically, the reader might wonder about the validity of a modified recycling hypothesis, where some fixed fraction of tally receipts (e.g., 50 percent) were recycled, with the remainder allocated according to political criteria. Both figures one and two show that this possibility is not supported by the data. The plots describing a candidate's minimum and maximum predicted allocation show that depending on circumstances (the candidate's electoral prospects and the cost of running a campaign in her state), a candidate may receive an allocation that far exceeds his or her tally, or an allocation that is far less than her tally receipts.<sup>5</sup> The predictions also vary across the two election cycles analyzed here. Thus, there is no fixed minimum (or maximum) percentage of tally receipts that candidates can expect as an allocation regardless of their political circumstances.<sup>6</sup> Similarly, contributors lobbied by a candidate to make a contribution at the to the DSCC could not reasonably expect that some fixed percentage of their contribution would be recycled to the candidate in question. Rather, they would have to expect that DSCC allocations would be made based on political context -- a context that may result in an extremely large allocation to their candidate, or a very

<sup>5</sup> While the figures one and two show a nonzero minimum level of tallying, this finding was shown earlier to be a predictable and nonsubstantive result of anomalies in the data. Even if we accept this result as substantive, it does not support a modified recycling hypothesis (i.e., 50 percent of tally receipts are recycled), as the minimum predicted allocation varies across the range of tally receipts. Attempts to explain this variation as a byproduct of some complex and difficult-to-specify recycling scheme invariably wind up looking identical to the electioneering hypothesis.

<sup>6</sup> Moreover, extreme values of the explanatory variables (campaign costs and campaign prospects) that were not observed in the 1992 or 1994 elections, or additional factors such as an election that is considered a "must win" by the DSCC might push predicted allocations even higher than is seen in figures one and two. Similarly, the DSCC might make no allocation to a candidate whose prospects for winning are considered hopeless, or who is ideologically out of step with the party platform on issues of the highest salience -- even if the candidate has tallied substantial funds to the DSCC. Thus, the variation in allocations observed here is, if anything, an underestimate of what happens and what might happen in the real world.



small, even nonexistent, allocation.

### Political Factors and Tally Receipts

Figure three provides a similar interpretation of the second part of the analysis, relating tally receipts to state allocation limits for the 1992 data. As in figures one and two, the two solid lines plot the maximum and minimum predicted tally receipts for a candidate as a function of the allocation limit for the candidate's state.<sup>7</sup> (However, the scale on the y-axis in figure three is linear rather than logarithmic.) The difference between the maximum and minimum lines represents political context -- the candidate's electoral prospects and his or her ability to raise funds. The "Max. Predicted" line gives the amount of tallying predicted for a candidate who is engaged in a tight race and who has a well-developed fundraising organization, while the "Min. Predicted" gives the expected amount of tallying for a candidate who is well out of the running and expends little effort on the tally program. As in figures one and two, a horizontal (dotted) line at 100 percent is added as a reference. This is the amount of tallying that would be expected under the recycling hypothesis.

As in the case of allocations, the recycling hypothesis predicts that the maximum predicted tally in figure three should lie near 100 percent, reflecting the idea that if that tally receipts are generally returned to candidates, strong candidates should work to generate tally receipts right up to their state's allocation limit, as this limit provide a ceiling on what the party can give to them.<sup>8</sup> If, on the other hand, the electioneering hypothesis is true, the maximum and minimum lines should be relatively far apart, reflecting the notion that tally receipts reflect political context rather than an expectation of recycling. The maximum should not lie near the 100 percent line as well.

The message of figure three is simple: not only do tally receipts vary with political circumstances, they show no signs of tracking allocation limits. In states with low allocation limits, candidates may tally nothing at all -- or they may tally far more than the limit, reflecting the possible variation in election prospects and in candidates' ability to raise funds. As allocation limits increase, candidates are likely to tally something, but far less than the maximum

<sup>7</sup> Again, the min. predicted line is not at the theoretically reasonable position -- at zero regardless of allocation limit -- because of an anomaly in the data. The problem is the empirical regularity that elections in large (high-population) states (i.e., California, New York, etc.) tend to attract national attention. Moreover, owing to this national attention and to the relative partisan balance of these states, their elections almost always feature well-qualified, politically attractive challengers. In contrast, small states with low allocation limits are more likely to have low-salience races with challengers who do not attract much support or run a credible campaign. The result is a nonzero minimum level of tallying, a level which increases with the allocation limit -- the circumstances that would yield zero tallying (the theoretic minimum) simply do not arise in high-allocation limit states. As with the discussion of the minimum level of allocations, this anomaly does not compromise the analysis, as the observed differences between minimum and maximum tallies are sufficient to distinguish between the electioneering and recycling hypotheses. Moreover, absent the empirical regularity discussed here, the minimum predicted tally line would be expected to lie at zero.

<sup>8</sup> One might argue that this expectation might not hold for states with extremely high allocation limits (i.e., California), but it should surely hold for states with low and medium ceilings.



allocation that they could receive from their party. In short, there is no evidence of recycling, and much evidence of electioneering.

A similar pattern is evidenced in the analysis of 1994 tally data as shown in figure four. In fact, the plots are virtually identical. Again, tally receipts are not linear with allocation limits. Moreover, candidates are predicted to tally substantially different amounts depending on their political circumstances.

### Conclusion

Within the limits of available data, the message is clear: the DSCC's allocation of funds collected through the tally program appears to reflect a political strategy, one directed at preserving the party's incumbents running for reelection and electing as many of the party's challengers to office. While there are certainly isolated pieces of evidence that are consistent with the recycling hypothesis, once the results are considered within a multivariate framework, the electioneering hypothesis emerges as the clearly best explanation of the DSCC's actions.

## Appendix One:

### Models, Variables, and Parameter Estimates

To begin with, both the direct test of the role of political factors in allocation decisions (Figures one and two) are derived from a statistical model where DSCC allocations are assumed to be a function of a candidate's election prospects, the cost of campaigning in her state and the amount tallied to the DSCC by the candidate. By simultaneously assessing the importance of political factors and tally receipts in determining allocation decisions, this specification allows the critical test between the recycling and electioneering hypothesis described earlier.

The equation used to analyze DSCC allocations and the associated hypotheses takes on the following form:

$$\text{Allocation} = \beta_0 + \beta_1(\text{Tally}) + \beta_2(\text{Tally} * \text{Chal}) + \beta_3(\text{Target} * \text{Expend}) + \beta_4(\text{Target} * \text{Expend} * \text{Incumb}), \quad (1)$$

Where:

Allocation	The DSCC's allocation to candidate i (\$1000).
Tally	Candidate i's tally receipts to the DSCC (\$1000).
Target	1 if candidate was an incumbent in danger of losing, or challenger with good chance of winning (This measure was constructed from data in <i>Congressional Quarterly's</i> October 1992 and 1994 Election Outlook issues.)
Chal	A dummy variable, 1 if candidate i is a challenger, 0 otherwise.
Expend	A measure of the cost of campaigning in candidate i's home state, as developed by Gronke (1993).
Incumb	A dummy variable, 1 if candidate i is an incumbent, 0 otherwise.

This specification reflects the earlier discussion. The parameters will be estimated separately for 1992 and 1994, allowing for the possibility that the DSCC's allocation strategy might have varied between the two years. The predictions for parameters are as follows. If the electioneering hypothesis is true,  $\beta_3$  should be significant and positive -- that is to say, higher allocations will be made to targeted candidates, and to targeted candidates running in high-cost states. Similarly,  $\beta_4$  should also be positive and significant, reflecting the DSCC's special interest in reelecting incumbents. As noted earlier, a literal reading of the electioneering hypothesis would imply that estimates for both  $\beta_1$  and  $\beta_2$  should be zero (nonsignificant), implying that a candidate's tally has no impact on his or her allocation. However, as noted later, limitations on available data raise the possibility that these parameters will be positive and significant, even if the electioneering hypothesis is true.

If, on the other hand, the recycling hypothesis is true, a different pattern of estimates in the allocation equation should be observed. To begin with,  $\beta_1$  and  $\beta_2$  should both be positive and significant, reflecting the notion that tally receipts are recycled to the candidates who helped to raise them. Moreover,  $\beta_3$  and  $\beta_4$  should both be equal to zero (nonsignificant), reflecting the unimportance of political factors in determining allocation decisions.

Estimation of equation (1) is complicated by the fact that the DSCC's allocations to candidates are limited by a federally-mandated cap on total allocations. The magnitude of the cap varies state-by-state as a function of state population. As a result, the dependent variable -- DSCC's allocations to candidate i -- may be censored for some observations, meaning that the

DSCC might have wished to donate more money to candidate *i* but was limited by the allocation cap in *i*'s state. The technical term for this phenomena is *censoring*. Left uncorrected, censoring would bias the analysis, although the direction of the bias is difficult to predict without careful study of the dataset being analyzed. Happily, techniques exist to correct for censoring. This analysis uses the correction discussed in Maddala (1983, 158-160).

Using the correction given in Maddala and estimating the model using maximum likelihood techniques, the resulting parameter estimates are given in table one. In general, the pattern of parameter estimates in table one supports the electioneering hypothesis: political factors appear to play a significant role in determining DSCC allocations. Such a finding is completely contrary to the recycling hypothesis, and places its validity in doubt. However, table one also shows the tally variables to be significant which, while not surprising, mandates the additional analysis contained in figure one of the main text.<sup>9</sup> For more details, and for a more definitive conclusion about the electioneering and recycling hypotheses, see the main text.

The corresponding equation for the analysis of tally receipts in figures three and four is as follows:

$$\text{Tally} = \beta_0 + \beta_1(\text{Limit}) + \beta_2(\text{Receipts} * \text{Target}) + \beta_3(\text{Receipts} * \text{Target} * \text{Incumb}) \quad (2)$$

Where:

Tally	Candidate <i>i</i> 's tally receipts to the DSCC (\$1000).
Limit	The Federally-mandated allocation limit for <i>i</i> 's state (\$1000)
Receipts	Candidate <i>i</i> 's campaign spending, less party contributions, taken from <i>Politics in America, 1992 and 1994</i> (\$1000)
Target	1 if candidate was incumbent in danger of losing, or challenger with good chance of winning (This measure was constructed from data in <i>Congressional Quarterly's</i> October 1992 and 1994 Election Outlook issues.)
Incumb	A dummy variable, 1 if candidate <i>i</i> is an incumbent, 0 otherwise.

This equation does not exhibit the censoring problems noted for the allocation equation, and can therefore be estimated with ordinary least squares. And as in the case of the allocation regression, the 1992 and 1994 datasets will be analyzed separately. Predictions for the variables are as follows. If the electioneering hypothesis is correct,  $\beta_2$  and  $\beta_3$  should be positive and significant. In contrast, the recycling hypothesis would predict that both variables would be equal to zero (i.e., nonsignificant). The recycling hypothesis predicts that  $\beta_1$  will be positive and significant, while the electioneering hypothesis predicts it will not be significant, subject to the caveat noted earlier concerning data limitations.

<sup>9</sup> It should be noted that because of data limitations, the tally variables could well be statistically significant, as shown in table one, even if the recycling hypothesis were false and the electioneering hypothesis true. This problem arises because of the factors noted earlier: the preponderance of competitive elections in large states, problems involved with measuring a candidate's campaign prospects and attractiveness, and the possible use of tally receipts as a signal of both prospects and attractiveness. For all of these reasons, it would be no surprise to find that the tally variable "pick ups" variation in allocations that is actually explained by differences across candidates in the likelihood of election -- even if the electioneering hypothesis is a complete explanation of the allocation process, and the recycling hypothesis completely false



Parameter estimates for equation (2) are given in table two. Again, the signs and significance of the parameter estimates are consistent with the electioneering hypothesis, although the parameter associated with the limit variable ( $\beta_1$ ) is significant as the recycling hypothesis predicts.<sup>10</sup> (Note, if particular, that safe incumbents tally at a higher level than nontargeted challengers but at a lower rate compared to targeted candidates of all types. This result is completely contrary to the recycling hypothesis, and supports the electioneering hypothesis.) A more definitive conclusion is offered in the main text.

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<sup>10</sup> As with allocations, a positive relationship between tally receipts and allocation limits could exist even if the recycling hypothesis were false and the electioneering hypothesis true. For example, an association between receipts and allocation limits could reflect the fact that states with higher allocation limits have more people within their borders and, as a result, more opportunities for soliciting tally contributions. Moreover, high-population states (e.g., California, Florida, Illinois, New York, and Texas) also tend to have large urban areas, which are prime locations for fundraising events cosponsored by the DSCC and local candidates. Both factors would lead to a positive relationship being observed between tally receipts and allocation limits, even if the recycling hypothesis is completely false.

## References

Gronke, Paul. 1993. *Settings, Institutions, Campaigns, and the Vote: Comparing Senate and House Elections*. PhD. dissertation, University of Michigan.

Jacobson, Gary. 1993. *The Politics of Congressional Elections*. 3rd Edition. New York: Harper Collins.

Maddala, G. S. 1983. *Limited-Dependent and Qualitative Variables in Econometrics*. New York: Cambridge University Press.



Table One: Parameter Estimates for Allocation Regressions

Variable	1992 Election Cycle		1994 Election Cycle	
	Parameter	Sig. Level	Parameter	Sig. Level
Constant	11.3 (22.9)	-	-17.9 (27.8)	-
\$ Tallied	.56 (.16)	< .01	.92 (.10)	< .01
\$ Tallied (Chal. Dummy)	.42 (.19)	< .05	.63 (.17)	< .01
Targeted Candidate	.47 (.09)	< .01	.70 (.22)	< .01
Targeted (Inc. Dummy)	.51 (.20)	< .05	-.39 (.30)	n.s.
Inverse Mills Ratio	-10.1		-59.4	
R <sup>2</sup>	.97		.95	
N of Cases	33		34	

Cell entries are parameter (std. error).

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Table Two: Parameter Estimates for Tally Regressions

Variable	1992 Election Cycle		1994 Election Cycle	
	Parameter	Sig. Level	Parameter	Sig. Level
Constant	-50.4 (35.5)	-	-87.5 (44.5)	-
Allocation Limit	.32 (.08)	< .01	.40 (.065)	< .01
Targeted Candidate* Expenditures	.042 (.025)	< .05	.086 (.013)	< .01
Safe Incumbent* Expenditures	.029 (.021)	< .10	.029 (.016)	< .05
R <sup>2</sup>	.83		.85	
N of Cases	34		34	

Cell entries are parameter (std. error).

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Figure 1  
Predicted Allocation as Function of Amount Talled  
(1992 Election Cycle)

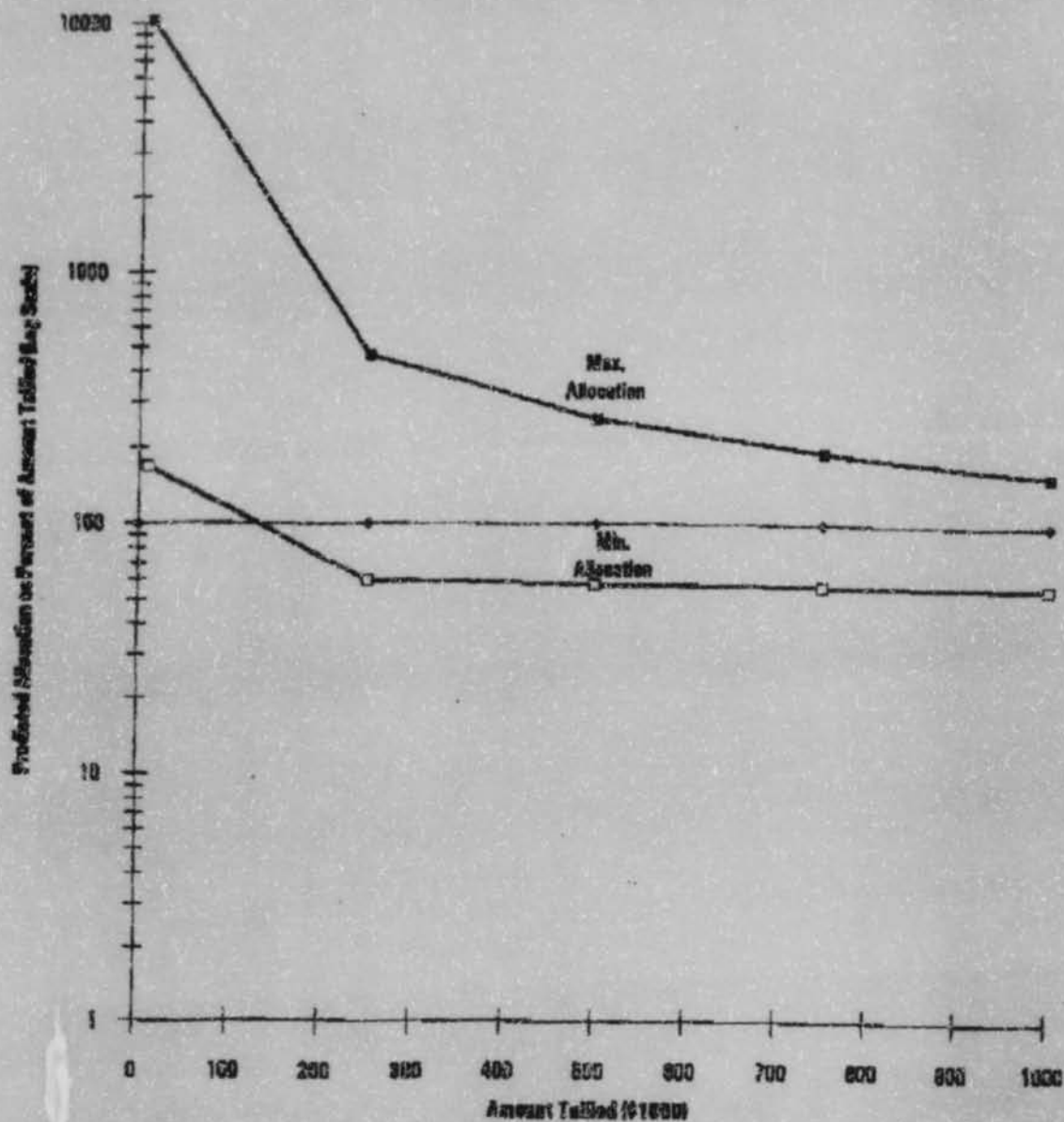


Figure 2  
Predicted Allocation as Function of Amount Titled  
(1984 Election Cycle)

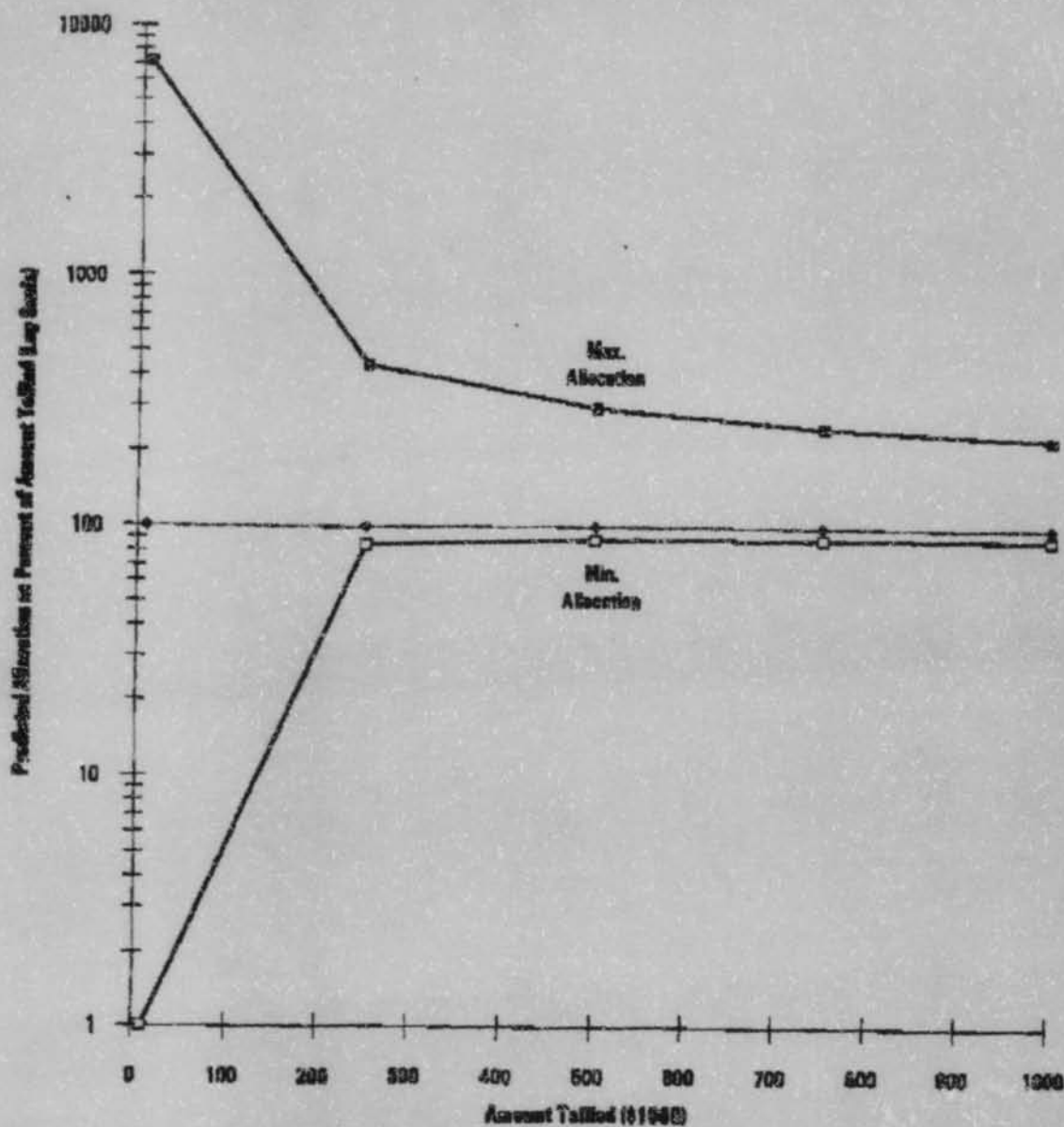




Figure 3  
Predicted Tally as Function of Allocation Limit  
(1992 Election Cycle)

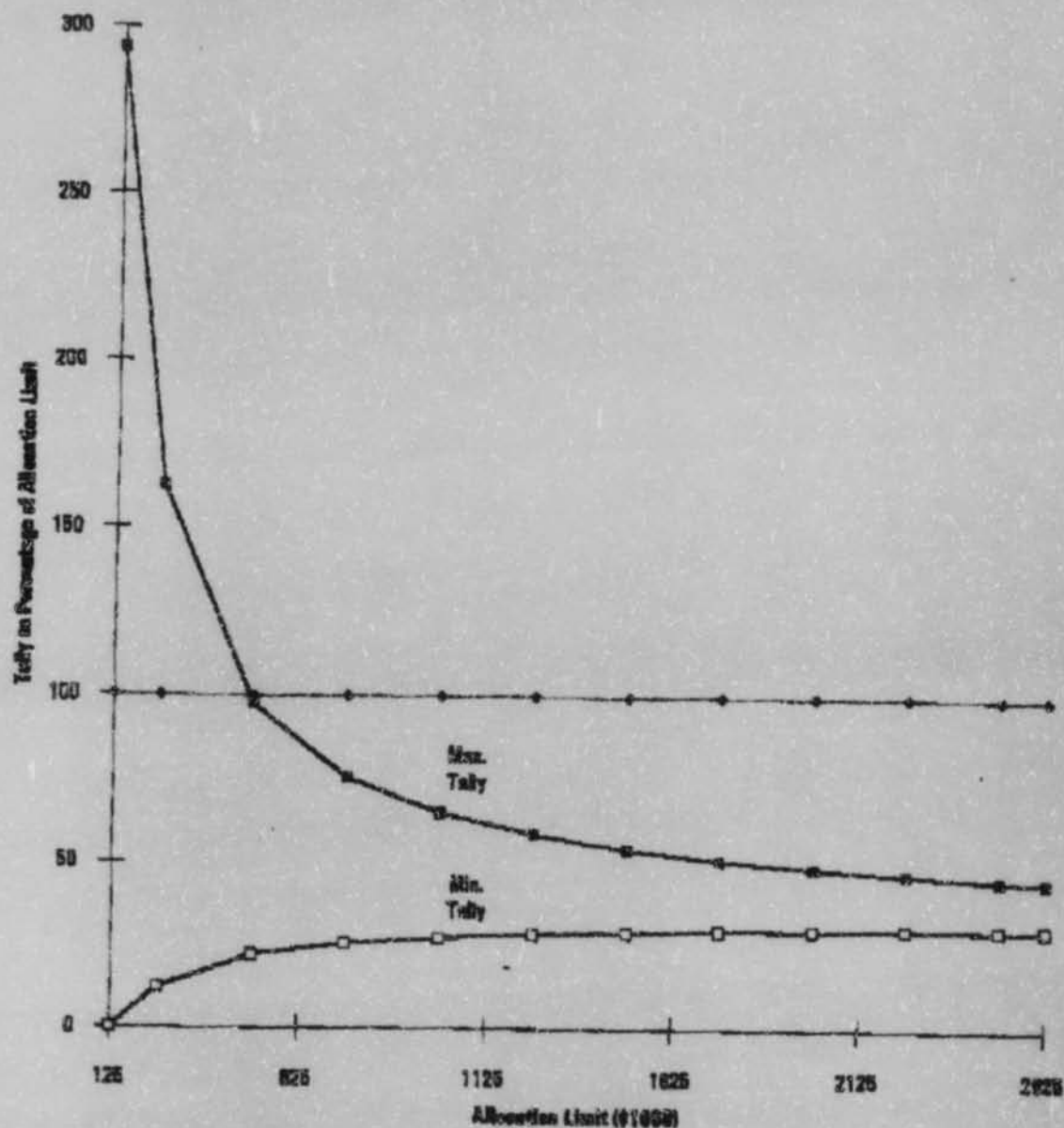
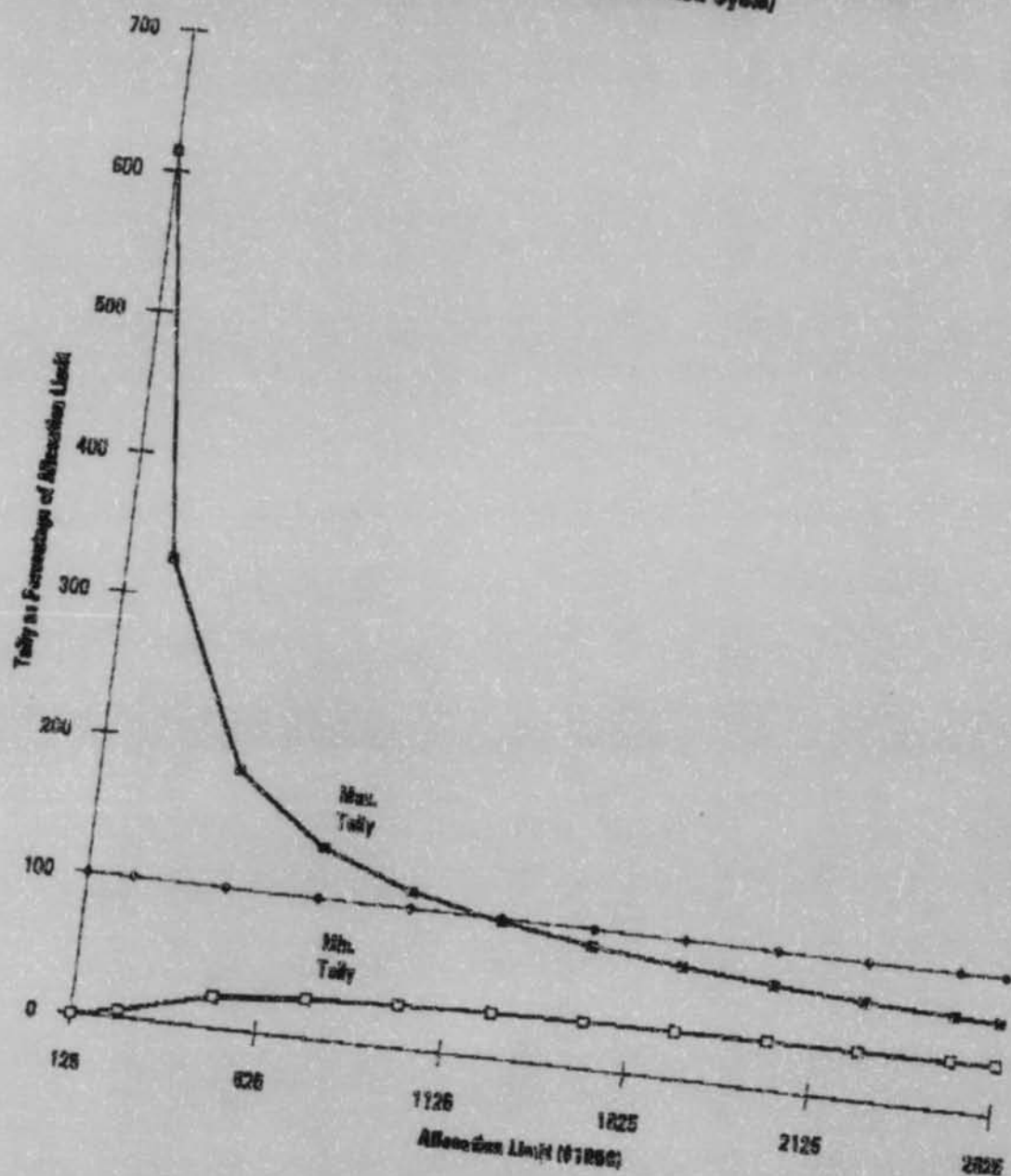




Figure 4  
Predicted Tally as Function of Allocation Limit  
(1994 Election Cycle)



Dear Candidate,

Governor Roy Romer, Democratic Chair Michael Beatty and I would like to invite you to an important DSCC event. January 12-15, 1996 is the DSCC Majority Trust weekend in Aspen. This is a weekend where we bring together our \$20,000 contributors from around the country. We will also be joined by Senators **Howell Heflin**, **Joe Biden**, **Frank Lautenberg**, **Tom Harkin** and **Byron Dorgan**, with many other special guests not yet confirmed. Please review the enclosed schedule for the weekend.

This weekend is an important opportunity for you as well. As a special incentive for Coloradans, we are offering them this weekend for \$5000. In addition, our Friday night dinner of this weekend being hosted by Bob Utley, Chairman of First Southwest Company, will be open to Colorado individuals who donate \$1000 to the DSCC. All the funds raised through these individuals will be credited to the Colorado tally.

As you know, the DSCC is allowed to allocate \$325,000 to the Colorado Senate race. The money that you raise now and throughout 1996 will enable us to fully fund Colorado and our other competitive Senate races around the country. I am asking each Colorado Senate candidate to commit to raising \$10,000 toward this weekend. These funds are crucial if the DSCC is to reach its goal of fully funding our Democratic nominees. I have enclosed tally information for you and your donors.

I look forward to seeing you in January. If you have any questions, please feel free to call me at 202-224-2447. If I am not there, please speak to Liz Silva of the DSCC staff.

Sincerely,

Bob Kerrey

Enclosure

H

**PERKINS COIE**  
**POLITICAL LAW GROUP**

TO: DSCC Fundraising Staff  
FROM: Perkins Coie Political Law Group  
RE: Tally Program Compliance

---

Last August the DSCC and the FEC entered into a conciliation agreement to settle various complaints against the DSCC's tally program. As a part of that settlement, we exacted significant concessions from the FEC, including an acknowledgment that, properly conducted, the tally program is legal. As for the DSCC, it agreed to implement the following "remedial" steps:

1. Any contributions that is received by the DSCC that appears to be earmarked to a particular candidate must be returned. In past cycles those contributions were deposited and a form letter was sent to the contributor. This no longer is acceptable. Any check that bears the name of a candidate, including a memo line note such as "tally to \_\_\_\_\_" or "for \_\_\_\_\_" must be returned unless it is accompanied by a properly worded letter or response card, signed by the contributor, that indicates that the donor understands the tally program (see number 3 below for acceptable language). The returned check may be accompanied by a proper solicitation for a new contribution.
2. We must tell our candidates and contributors that the DSCC does not accept earmarked contributions and that tallied contributions are spent for DSCC activities and programs as the Committee determines within its sole discretion.

---

For more information:

Robert F. Bauer (202) 434-1602  
Judith L. Corley (202) 434-1622  
B. Holly Schadler (202) 434-1634

Marc E. Elias (202) 434-1625  
Alicia Alexion (Legal Assistant- (202) 434-1658  
Compliance Specialist)

24 Hour Pager 1-800-608-3145



3. All tally solicitations by the DSCC, its candidates and agents must include the following language:

The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

This language should be included as its own paragraph or a part of another but it must be included in its entirety.

4. The DSCC should review candidate tally fundraising solicitations, when possible, to make sure they comply with the requirements set forth above. To make this task easier we will be sending a memorandum to all candidates in the next few days informing them about the tally program.

While some of these requirements require effort and attention, the good news is that if we comply with them the tally program can continue to be a valuable DSCC fundraising program. In the future we will be providing further written and oral guidance regarding the tally program to both the DSCC staff and candidates. In the meantime, if you have any questions please do not hesitate to contact one of us.

MEE:mee

**PERKINS COIE**  
**POLITICAL LAW GROUP**

TO: 1996 Democratic Senate Candidates

FROM: Robert F. Bauer, General Counsel  
Democratic Senatorial Campaign Committee

RE: Tally Program Compliance

---

As you know the "tally program" is one of the DSCC's most important and successful fundraising programs. So that you can fully participate in this program, we provide the following guidance:

1. Tally is not an earmarking program; indeed, the DSCC does not accept earmarked contributions. Therefore, any contributions that is received by the DSCC that appears to be earmarked to a particular candidate will be returned. Any check that bears the name of a candidate, including a memo line note such as "tally to \_\_\_\_\_" or "for \_\_\_\_\_" will be returned unless it is accompanied by a signed and properly worded letter or response card that indicates that the donor understands the tally program (see number 3 below for acceptable language). The returned check may be accompanied by a proper solicitation for a new contribution.
2. Candidates and their fundraising agents should tell contributors solicited for tally contributions that the DSCC does not accept earmarked contributions and that tallied contributions are spent for DSCC activities and programs as the Committee determines within its sole discretion.

---

For more information:

Robert F. Bauer (202) 434-1602  
Judith L. Corley (202) 434-1622  
B. Holly Schadler (202) 434-1634

Marc E. Elias  
Alicia Alexion (Legal Assistant-  
Compliance Specialist)

(202) 434-1625  
(202) 434-1658

24 Hour Pager 1-800-608-3145



3. All written tally solicitations should include the following language:

The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

This language should be included as its own paragraph or a part of another and should be included in its entirety.

4. Candidates are encouraged, when possible, to have the DSCC review tally fundraising solicitations.

The tally program will continue to be a valuable DSCC fundraising program. In the future we will be providing further written and oral guidance regarding the tally program to you. In the meantime, if you have any questions please do not hesitate to contact the DSCC.

MEE:mee



# Democratic Senatorial Campaign Committee

430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447

Internet: info@dsc.org

J. Robert Kerror, ME

Chairman

Program Chairs

Next Majority Trust

John Breaux, LA

Women's Council

Barbara Mikulski, MI

Barbara Boxer, CA

Leadership Circle

Kent Conrad, ND

Labor Council

Russ Feingold, WI

DSCC Roundtable

David Pryor, AR

Carol Moseley-Braun, IL

Patty Murray, WA

February 8, 1996

Thank you for your recent contribution to the Democratic Senatorial Campaign Committee. However, we are unable to accept your generous contribution due to Federal Election Commission guidelines regarding "earmarked" contributions.

The memo line of your check indicates that your contribution is for the "Wyden Campaign." In order to avoid any misperception concerning the intent of your contribution, I am returning your check. While the Oregon Senate race ended with a victory for Senator Ron Wyden, it proved to be extremely expensive and the campaign needs to pay-off a debt. If you would like to help Senator Wyden reduce his campaign debt, please make your check payable to Wyden for Senate and send it to the following address:

Wyden for Senate  
P.O. Box 3498  
Portland, OR 97208

Thank you for your cooperation in assisting the DSCC to comply with federal campaign laws, and for your support of Senator Wyden.

Sincerely,

Tim Tozer  
Finance Assistant

K



## Democratic Senatorial Campaign Committee

430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447

Internet: info@dsc.org

J. Robert Kerrey, NE

Chairman

June 24, 1996

Program Chairs

Next Majority Trust

John Breaux, LA

Women's Council

Barbara Mikulski, MD

Barbara Boxer, CA

Leadership Circle

Kent Conrad, ND

Labor Council

Russ Feingold, WI

DSCC Roundtable

David Pryor, AR

Carol Moseley-Braun, IL

Patty Murray, WA

Thank you for your \$5,000 contribution to the Democratic Senatorial Campaign Committee. Unfortunately, we cannot accept the check in its current form because it is made payable to the "DSCC for Benefit of Ben Nelson." Under federal law, the DSCC is prohibited from accepting contributions earmarked for Senate candidates. That is to say the DSCC may not serve as a conduit in order to funnel money directly to our Senate candidates. In order for your contribution to be in compliance with federal election laws, please issue a replacement check made payable to the "DSCC."

The DSCC may allocate a certain amount of money to each state based upon population. For the 1996 Senate campaign in Nebraska, the DSCC may spend up to \$165,126 to support Governor Nelson in his bid for the U.S. Senate. Senator Bob Kerrey has already pledged that the DSCC will do everything possible to ensure Governor Nelson succeeds Senator Exon as the next U.S. Senator from Nebraska. Your participation in the DSCC will help make this possible.

Along with your contribution, I have enclosed information regarding the DSCC's "tally" program. Please read the information carefully, and if you should have any questions please feel free to call me at (202) 224-2447. Thank you for your patience and understanding in assisting the DSCC to properly comply with federal election guidelines and restrictions.

Sincerely,

Tim Tozer  
Finance Assistant

L





## Democratic Senatorial Campaign Committee

430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447

Internet: info@dscc.org

J. Robert Kerry, NE  
Chairman

### Program Chairs

### Next Majority Trust

John Breaux, LA

### Women's Council

Barbara Mikulski, MD

Barbara Boxer, CA

### Leadership Circle

Kent Conrad, ND

### Labor Council

Russ Feingold, WI

### DSCC Roundtable

David Pryor, AR

Carol Moseley-Braun, IL

Patty Murray, WA

November 14, 1995

Thank you for joining Senator Daschle and the DSCC on November 6, 1995. Your support will provide Senator Daschle and the DSCC with the resources necessary to wage successful Senate campaigns in 1996.

As per a telephone conversation between Kim Koivisto of Senator Daschle's office and your office, I am returning your recent contribution. The memo line of your check states that the contribution is "in honor of Senator Simon and Daschle." Since it is unlawful for the DSCC to "earmark" contributions, we are obligated to return your check under federal law. If you should desire to issue a replacement check, please do so at your earliest convenience. Your cooperation and understanding in helping the DSCC comply with federal election guidelines is appreciated.

Thank you again for your support of Senator Daschle and the DSCC.

Sincerely,

Tim Tozer  
Finance Assistant

M



## Democratic Senatorial Campaign Committee

430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447

Internet: info@dsc.org

### Democratic Senatorial Campaign Committee THE TALLY OPTION

J. Robert Kerrey, NE  
Chairman

Program Chairs

Next Majority Trust  
John Breaux, LA

Women's Council  
Barbara Mikulski, MD  
Barbara Boxer, CA

Leadership Circle  
Kent Conrad, ND

Labor Council  
Russ Feingold, WI

DSCC Roundtable  
David Pryor, AR  
Carol Moseley-Braun, IL  
Patty Murray, WA

#### WHAT ROLE DOES THE DSCC PLAY?

##### Funding Democratic Senate Nominees

The Democratic Senatorial Campaign Committee is a national party committee formed by the Democratic members of the U.S. Senate to help raise funds to provide campaign services for Democratic U.S. Senate incumbents and candidates throughout the country. The Finance Staff of the DSCC raises funds which are allocated to targeted Democratic Senate races based on factors such as the campaign's need and winability. These funds provide nominees with an extra source of funding apart from what is raised by the individual campaigns. The DSCC raises funds in a variety of ways through its donor programs and through national fundraising activities. PAC and personal funds are accepted by the DSCC. Contributions to the DSCC are not tax deductible under federal law.

#### WHY GIVE TO THE DSCC?

Under FEC regulations, an individual may contribute a maximum of \$2,000 directly to a candidate running for Federal office. (\$1000 in the primary and another \$1000 for the general election). In addition, an individual may contribute up to \$20,000 annually to a political party organization, such as the DSCC, which is part of the overall federal limit of \$25,000 per person per year as set by the Federal Election Commission. PAC's may contribute a maximum of \$15,000 annually to the DSCC. DSCC contributions allow donors to further support Democratic Senate candidates. This important source of funds can make the critical difference between winning and losing in the final days leading up to an election.

#### WHAT DOES "TALLY" MEAN?

When contributing to the DSCC, a donor may request that his or her contribution be "tallied" to the Democratic Senate candidate(s) of his or her choice. This is a way for a donor to express support for a candidate or candidates and how he or she would like the success in raising the contribution credited.

DSCC funds are allocated to targeted Democratic Senate candidates by the Allocation Committee of the DSCC. This committee sets the DSCC allocation policies at its discretion. In allocating funds to candidates, many factors are considered by the DSCC's Senate Allocation Committee such as need, winability, latest polling figures, finances on hand and the amount of funds tallied to the DSCC for that specific candidate. The DSCC maintains a record (a "Tally") of how much money each candidate helps to raise for the Committee. The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion. The DSCC Tally Groundrules are available to candidates, their representatives and donors on request.

#### HOW DO I JOIN THE DSCC SO I CAN "TALLY"?

The DSCC has many donor categories and levels of participation for PAC's and individuals with corresponding benefits for each donor group. All contributions to the DSCC at any donor level may be tallied to specific candidates by the donor. The DSCC requests that donors notify the DSCC in writing of their tally requests within 30 days of the receipt of their contribution. Tally requests in excess of 30 days cannot be honored.

For additional information, please call the DSCC Finance Division at (202) 224-2447.



**Host Committee**

Ron Burkle

Edye & Eli Broad

Bob Burkett

Diane & John Cooke

Barry Diller

Debbie & Sim Farar

Stanley Hirsh

Peter M. Hoffman

David Geffen

Ed McGrath

Karen & Gary Winnick

(Host Committee in formation)

**Senator Bob Kerrey**

Chairman of the Democratic Senatorial Campaign Committee

Cordially invites you to join him and special guests

**Senator Barbara Boxer**

**Senator Chris Dodd**

**Senator Bill Bradley**

**Senator Carl Levin**

for a reception to benefit the  
Democratic Senatorial Campaign Committee

Friday, June 23, 1995

at the home of

Ron Burkle

Green Acres

Beverly Hills

7:00 p.m.

Cocktails and Hors d'oeuvres

For more information contact

Tricia Riffenburgh at (818) 980-6961

\$1,000 Contribution

\$5,000 DSCC California Roundtable membership



**DEMOCRATIC SENATORIAL  
CAMPAIGN COMMITTEE**

- ☐ Yes, I/We will attend. Enclosed is my contribution of \$ \_\_\_\_\_
- ☐ I/We are unable to attend, but would like to help elect Democrats to the Senate.  
Enclosed is my contribution of \$ \_\_\_\_\_
- ☐ Yes, I/We would like to join the DSCC's California Roundtable.  
Enclosed is my contribution of \$5000 which will entitle me to a one year membership.
- ☐ I/We would like to tally my contribution to \_\_\_\_\_  
(See Reverse for Details)

Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year.

Name \_\_\_\_\_ Phone (\_\_\_\_) \_\_\_\_\_

Home Address \_\_\_\_\_

City and State \_\_\_\_\_ Zip \_\_\_\_\_

Title or Position \_\_\_\_\_ Self-Employed ☐

Employer or Firm \_\_\_\_\_ Phone (\_\_\_\_) \_\_\_\_\_

Business Address \_\_\_\_\_

City and State \_\_\_\_\_ Zip \_\_\_\_\_

**Make checks payable to:**

Democratic Senatorial Campaign Committee, and return in the enclosed envelope to:  
859 Hollywood Way, Suite 294, Burbank, CA 91505

Authorized and paid for by the Democratic Senatorial Campaign Committee.  
Contributions are not tax deductible on federal tax returns.  
Corporate contributions cannot be accepted.



The Democratic Senatorial Campaign Committee (DSCC) is a national party committee formed by the Democratic members of the U.S. Senate to help raise funds to provide campaign services for Democratic U.S. Senate incumbents and candidates throughout the country.

The DSCC can accept donations from individuals up to \$20,000 per calendar year (not to exceed the total \$25,000 yearly federal limit for an individual) and from PACs up to \$15,000 per calendar year.

The DSCC maintains a record (a "Tally") of how much money each candidate helps to raise for the Committee. The amount of money to be spent by the DSCC on behalf of the party nominee is based on the nominee's tally record and among other factors, the nominee's likelihood of winning and need for DSCC funds.

Senator Paul Wellstone

Senator Bob Kerrey

Chairman of the Democratic Senatorial Campaign Committee

request the pleasure of your company  
at a dinner to support

the Democratic Senatorial Campaign Committee

at  
the home of

Janice and Mark Dayton

Monday, August 19, 1996  
6:00 pm dinner

1701 Mount Curve Avenue  
Minneapolis, Minnesota

\$5,000 contribution  
Business Attire

R.S.V.P. Card Enclosed or call  
Mark Dayton at (612)377-5747

- 9
- The Democratic Senatorial Campaign Committee (DSCC) is a national party committee formed by the Democratic members of the U.S. Senate to help raise funds to provide campaign services for Democratic U.S. Senate incumbents and candidates throughout the country.
  - Under federal law, the DSCC may contribute up to \$17,500 per election cycle to candidates for the U.S. Senate. In addition, the DSCC may make expenditures in connection with the general election campaigns of Democratic nominees for the U.S. Senate. The amount the DSCC may spend on behalf of a nominee is based on the voting age population of that nominee's home state. The DSCC raises funds in a variety of ways - through DSCC donor programs, the Next Majority Trust, Leadership Circle, DSCC Roundtable and Women's Council; and through special events and national fundraising activities.
  - The DSCC can accept donations from individuals up to \$20,000 per calendar year (not to exceed the total \$25,000 yearly federal limit for an individual) and from PAC's up to \$15,000 per calendar year.
  - The DSCC maintains a record (a "Tally") of how much money each candidate helps raise for the Committee. The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.
  - Paid for and authorized by the Democratic Senatorial Campaign Committee. Contributions are not tax deductible.
- 9 7 0 4 3 8 0 3 6 4 3

YES, I would like to support the Democratic Senatorial Campaign Committee and help elect Democrats to the U.S. Senate!

☐ I will attend the reception and dinner (\$5,000)

☐ I am unable to attend, but want to help. Enclosed is my contribution in the amount of \_\_\_\_\_.

Please make checks payable to the Democratic Senatorial Campaign Committee. If you prefer to pay by credit card, please complete the following information:

☐ Visa ☐ MasterCard  
Number \_\_\_\_\_ Exp. Date \_\_\_\_\_

Federal Law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year.

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ Bus. Phone \_\_\_\_\_

Self Employed \_\_\_\_\_ Title or Position \_\_\_\_\_

Employer (or Firm) \_\_\_\_\_

Bus. Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Contributions are not tax deductible. Paid for and authorized by the Democratic Senatorial Campaign Committee, 430 South Capitol Street, SE Washington, DC 20003. (202) 224-2447.

97043803644

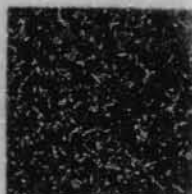




*TH*

Dionne Davies  
Robert Fitch  
George Gould  
Sonny Hall  
Jim and Warrice Price  
Paul Quinn  
Thomas H. Quinn  
Bob and Marcia Riesman  
Mark Weiner

*Committee in Formation*



SENATE DEMOCRATIC LEADER  
Senator Tom Daschle

DEMOCRATIC SENATORIAL  
CAMPAIGN COMMITTEE CHAIRMAN  
Senator Bob Kerrey

*and*

US SENATE CANDIDATE  
Congressman Jack Reed

*invite you to join them at a reception  
saluting the distinguished career of retiring*

Senator Claiborne Pell

*to benefit the*

Democratic Senatorial Campaign Committee's  
efforts to elect a new Democratic Majority  
and Congressman Jack Reed as the next  
Democratic Senator from Rhode Island

*at the home of Thomas H. Quinn  
1217 28th Street, NW  
Washington, DC*

*Wednesday, April 1, 1998  
7:00 PM*

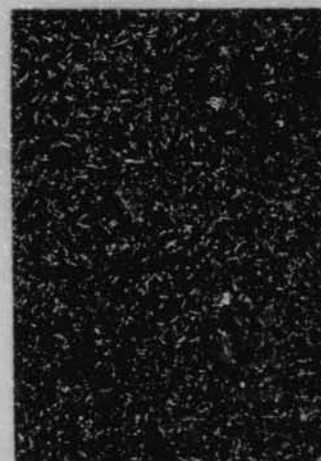
*Minimum Contribution: \$1,000*

*Please RSVP by enclosed card or call  
Chris Long at (703) 790-8093 or  
Liz Silva (202) 485-3756*

*Paid for by the Democratic Senatorial Campaign Committee*

- The Democratic Senatorial Campaign Committee (DSCC) is a national party committee formed by the Democratic members of the U.S. Senate to help raise funds to provide campaign services for Democratic U.S. Senate incumbents and candidates throughout the country.
- Under federal law, the DSCC may contribute up to \$17,500 per election cycle to candidates for the U.S. Senate. In addition, the DSCC may make expenditures in connection with the general election campaigns of Democratic nominees for the U.S. Senate. The amount the DSCC may spend on behalf of a nominee is based on the voting age population of that nominee's home state. The DSCC raises funds in a variety of ways - through DSCC donor programs, the Next Majority Trust, Leadership Circle, DSCC Roundtable and Women's Council; and through special events and national fundraising activities.
- The DSCC can accept donations from individuals up to \$20,000 per calendar year (not to exceed the total \$25,000 yearly federal limit for an individual) and from PAC's up to \$15,000 per calendar year.
- The DSCC maintains a record (a "Tally") of how much money each candidate helps raise for the Committee. The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.
- Paid for and authorized by the Democratic Senatorial Campaign Committee, Donald J. Foley, Treasurer. Contributions are not tax deductible.

A SALUTE TO SENATOR PELL



WELCOME TO JACK REED

INDIVIDUAL CONTRIBUTION

- ☐ Yes! I will attend the Salute to Senator Pell.  
(\$1,000 Contribution). Amount \$ \_\_\_\_\_
- ☐ No, I am unable to attend, but enclosed is  
my contribution of \$ \_\_\_\_\_

*Please make checks payable to the Democratic Senatorial Campaign Committee.  
If you prefer to pay by credit card, please complete the following information:*

☐ VISA ☐ MASTERCARD

NUMBER \_\_\_\_\_

EXP. DATE \_\_\_\_\_

*Federal law requires political committees to report the name, mailing address,  
occupation and name of employer for each individual whose contribution  
aggregate in excess of \$200 in a calendar year*

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_

STATE \_\_\_\_\_

ZIP \_\_\_\_\_

PHONE \_\_\_\_\_

BUSINESS PHONE \_\_\_\_\_

TITLE OR POSITION \_\_\_\_\_

☐ SELF-EMPLOYED

EMPLOYER (OR FIRM) \_\_\_\_\_

BUSINESS ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_

STATE \_\_\_\_\_

ZIP \_\_\_\_\_

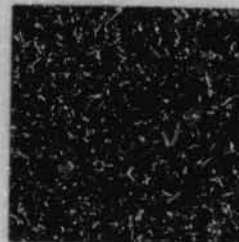
TICKETS UNDER THE NAME: \_\_\_\_\_

RESERVE: \_\_\_\_\_

I understand the tally system, and would like my contribution tallied to the  
Rhode Island nominee

Signature \_\_\_\_\_

Paid for by the Democratic Senatorial Campaign Committee



ATTENTION: LIZ SILVA  
430 South Capitol St., SE  
Washington, DC 20003



97043803647



THE HONORABLE JIMMY CARTER

THE HONORABLE SAM NUNN

and

THE HONORABLE ZELL MILLER

Cordially invite you to attend a dinner honoring

MAX CLELAND

in his bid for the United States Senate

On Monday, September 30, 1996

at the JW Marriott Hotel  
3300 Lenox Road, N.E.  
Atlanta, Georgia

7:00 - 9:00 p.m.  
Business Attire

\$1,000 per person dinner  
\$10,000 host committee

Please RSVP by enclosed card or call Tommy Thompson at (770)458-2662

Paid for by the Democratic Senatorial Campaign Committee.  
Contributions are not tax deductible

R

The Democratic Senatorial Campaign Committee (DSCC) is a national party committee formed by the Democratic members of the U.S. Senate to help raise funds to provide campaign services for Democratic U.S. Senate incumbents and candidates throughout the country.

The DSCC can accept donations from individuals up to \$20,000 per calendar year (not to exceed the total \$25,000 yearly federal limit for an individual) and from PACs up to \$15,000 per calendar year.

The DSCC does not accept contributions earmarked for a particular candidate. The DSCC maintains a record (a "Tally") of how much money each candidate helps to raise for the Committee. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

#### Allocation Formula for Funds

The allocation for funds raised under this Agreement shall be as follows:

Contributors shall be advised and the proceeds shall be allocated as follows:

The first \$1,000 of each contribution from an individual and the first \$5,000 of any contribution from a qualified multicandidate committee PAC will be allocated to Friends of Max Cleland Campaign Committee and designated for the general election. Any portion of any contribution in excess of these amounts or that would cause a contributor to exceed applicable contribution limits to Friends of Max Cleland Campaign Committee will be allocated to the DSCC.

All other contributions to the extent they are allowed under Georgia law, such as individual contribution in excess of federal limits, will be allocated to the DSCC.

9 7 0 4 3 8 0 3 6 4 8

Yes! I Would Like To Support the  
Georgia Victory Fund  
And Help Elect Max Cleland To The U.S. Senate!

- ☐ I will serve on the Host Committee, be a table buyer (10 seats) and attend the special reception (\$10,000).  
☐ I will attend the dinner (\$1,000).

For additional details, please call Tommy Thompson at (770)458-2002.

Please make checks payable to "Georgia Victory Fund."  
Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year.

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ Bus. Phone \_\_\_\_\_

Self Employed \_\_\_\_\_ Title or Position \_\_\_\_\_

Employer (or Firm) \_\_\_\_\_

*Paid for by the Democratic Senatorial Campaign Committee.  
Contributions to this committee are not deductible for federal income tax purposes.  
Please see reverse for more details.*





# Democratic Senatorial Campaign Committee

430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447

Internet: info@dscc.org

J. Robert Nery, NE  
Chairman

Program Chairs

Reet Majority Trust

John Brown, LA

Women's Council

Barbara Mikulski, MD

Barbara Boxer, CA

Leadership Circle

Paul Canard, ND

Minor Council

Russ Feingold, WI

DSCC Roadtable

David Pryor, AR

Carol Mosley-Deane, IL

Patty Murray, WA

## FAX COVER SHEET

Please Deliver As Soon As Possible

Date: \_\_\_\_\_ Time: \_\_\_\_\_

To: Laurie Borders

From: LISA COWELL

Send to FAX #: 312-832-0468

COMMENTS: Caught a typo. looks ok. If  
you want to add the "tally" option - you  
must also include the language attached -

(see \*) in place noted. They must write in a  
name (hopefully DD!!) and sign. Can do this in

lieu of a tally letter. If you do this, please fax to me so I  
Number of Pages to Follow: 4 *Can show my lawyer, too.*

DSCC Telephone: (202) 224-2447

Lisa Cowell's Direct Line: (202) 485-3110 *thanks*

DSCC FAX: (202) 485-3120

5

①

## Durbin Contribution Form

### Contribution List & Edition Number

#### Contribution

\$500 #  
\$500 #  
\$1,500 #  
\$2,500 #  
\$1,000 #  
\$1,000 #  
\$1,000 #

#### Contribution

\$2,500 #  
\$1,000 #  
\$1,000 #  
\$1,000 #  
\$500 #  
\$750 #

Total Contribution: \_\_\_\_\_

### Payment

#### Check

Please make checks payable to the Illinois Seante Victory Fund.

#### Visa & Mastercard Payment

Name (as appears on Credit Card): \_\_\_\_\_

Card #: \_\_\_\_\_ Exp Date \_\_\_\_\_

Expiration Date: \_\_\_\_\_

### Shipping and Handling Charges

Please make shipping checks payable to

#### Shipping:

\$20 - Wegman & Holzer prints only  
\$50 - 5 or less prints  
\$75 - more than 6 prints  
\$125 - set

*JS* This is a joint ....

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Occupation: \_\_\_\_\_ Employer: \_\_\_\_\_

☒ Please tally  
My contribution should be designated according to the allocation formula stated on the reverse.

Signature: \_\_\_\_\_

97043803651

**Durbin***Take 9B  
Durbin letterhead  
& use plan*

(2)

## Illinois Senate Victory Fund

Illinois Senate Victory Fund is a joint fundraising committee authorized by Friends of Dick Durbin and the Democratic Senatorial Campaign Committee (DSCC).

The first \$1000 of each federal contribution from an individual and up to the first \$5000 of a contribution from a qualified multi-candidate committee PAC will be allocated to Friends of Dick Durbin and designated for the general election. Any portion of any contribution in excess of these amounts or that would cause a contributor to exceed applicable contribution limits to Friends of Dick Durbin will be allocated to the DSCC.

Notwithstanding the allocation formula, any contributor may designate his or her contribution for a particular participant. The allocation formula above may change if any contributor makes a contribution that, when allocated, would exceed the amount he or she can lawfully give to any participants.

The DSCC is a national party committee, formed by the Democratic United States Senators to help raise funds for the Democratic U.S. Senate candidates throughout the country. It can accept donations from individuals of up to \$20,000 per calendar year (not to exceed the total \$25,000 yearly federal limit) and from PAC's up to \$15,000 per calendar year.

*PH → X*  
The DSCC is authorized to allocate \$1.1 million in Illinois to support the ~~Durbin for Senate Campaign~~. *Illinois Senate race.*

For more information please contact Nancy Kohn, Chicago Finance Director, Friends of Dick Durbin, (312) 832-9600.

Paid for by

*Illinois**Friends of Dick Durbin*

500 N. Dearborn, Suite 500 • Chicago, IL 60610

P.O. Box 1243 • Springfield, IL 62703



9 7 0 4 3 8 0 3 6 5 5

10-02-1996 9 16:41

FR01

Front

# ARTS DURBIN

- ☐ I will attend the October 12, 1996 Fundraiser
- ☐ Enclosed is my contribution:
- ☐ \$100 Individual Ticket
  - ☐ \$500 Patron
  - ☐ \$1,000 Sponsor

- ☐ I cannot attend, but want to help Dick Durbin.  
Enclosed is my contribution of \$\_\_\_\_\_.

add  
this to  
1 page

This is a joint fundraising event for Friends of Dick Durbin and the Democratic Senatorial Campaign Committee. Please make checks payable to "Illinois Senate Victory Fund."

Federal law requires political committees to request the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year.

NAME \_\_\_\_\_

RESIDENCE ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

PHONE \_\_\_\_\_ BUSINESS PHONE \_\_\_\_\_

TITLE OR POSITION \_\_\_\_\_ ☐ SELF EMPLOYED

EMPLOYER (OR FIRM) \_\_\_\_\_

BUSINESS ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

My contribution should be designated according to the allocation formula stated on the reverse.

SIGNATURE \_\_\_\_\_

Back

# ILLINOIS SENATE VICTORY FUND

Illinois Senate Victory Fund is a joint fundraising committee authorized by Friends of Dick Durbin and the Democratic Senatorial Campaign Committee (DSCC).

The first \$1000 of each federal contribution from an individual and up to the first \$5000 of a contribution from a qualified multi-candidate committee PAC will be allocated to Friends of Dick Durbin and designated for the general election. Any portion of any contribution in excess of these amounts or that would cause a contributor to exceed applicable contribution limits to Friends of Dick Durbin will be allocated to the DSCC.

Notwithstanding the allocation formula, any contributor may designate his or her contribution for a particular participant. The allocation formula above may change if any contributor makes a contribution that, when allocated, would exceed the amount he or she can lawfully give to any participants.

The DSCC is a national party committee, formed by the Democratic United States Senators to help raise funds for the Democratic U.S. Senate candidates throughout the country. It can accept donations from individuals of up to \$20,000 per calendar year (not to exceed the total \$25,000 yearly federal limit) and from PAC's up to \$15,000 per calendar year.

The DSCC is authorized to allocate \$1.1 million in Illinois to support the Durbin for Senate Campaign.

For more information please contact Nancy Kuhn, Chicago Finance Director, Friends of Dick Durbin, (312) 832-9600.

P. 9

The Democratic Senatorial Campaign Committee (DSCC) is a national party committee formed by the Democratic members of the U.S. Senate to help raise funds to provide campaign services for Democratic U.S. Senate incumbents and candidates throughout the country.

The DSCC can accept donations from individuals up to \$20,000 per calendar year (not to exceed the total \$25,000 yearly federal limit for an individual) and from PACs up to \$15,000 per calendar year.

The DSCC does not accept contributions earmarked for a particular candidate. The DSCC maintains a record (a "Tally") of how much money each candidate helps to raise for the Committee. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

- 9 7 0 4 3 8 0 3 6 5 4
- ☐ Yes, I/We will attend. Enclosed is my contribution of \$ \_\_\_\_\_
- ☐ I/We are unable to attend, but would like to help elect Democrats to the Senate.  
Enclosed is my contribution of \$ \_\_\_\_\_
- ☐ I/We would like to tally my contribution to \_\_\_\_\_  
(See Reverse for Details)

Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year.

Name \_\_\_\_\_ Phone \_\_\_\_\_  
Home Address \_\_\_\_\_  
City and State \_\_\_\_\_ Zip \_\_\_\_\_  
Title or Position \_\_\_\_\_ Self-Employed ☐  
Employer or Firm \_\_\_\_\_ Phone \_\_\_\_\_  
Business Address \_\_\_\_\_  
City and State \_\_\_\_\_ Zip \_\_\_\_\_

**Make checks payable to:**

Democratic Senatorial Campaign Committee, and return in the enclosed envelope to:  
430 South Capitol Street, S.E., Washington, D.C. 20003

Authorized and paid for by the Democratic Senatorial Campaign Committee.  
Contributions are not tax deductible on federal returns.



March 11, 1996

Ms. Melissa Maxfield  
Democratic Senatorial Campaign Committee  
430 South Capitol Street, S.E.  
Washington, D.C. 20003

Dear Melissa:

Please tally the  
contribution of \$5,000 to the Democratic Senatorial Campaign  
Committee to Senator Jim Exon.

The            understands that the DSCC does not accept contributions  
earmarked for a particular candidate and that this contribution will  
not be treated as an earmarked contribution. We further understand  
that contributions tallied for a particular candidate will be spent for  
DSCC activities and programs as the Committee determines within  
its sole discretion.

Sincerely,

T

April 23, 1996

Ms. Stephanie Cooper  
Finance Director  
Democratic Senatorial Campaign Committee  
430 South Capitol Street, S.E.  
1st Floor  
Washington, D.C. 20003

*Stephanie*  
Dear Ms. ~~Cooper~~:

Please tally to the name of Senator Max Baucus \$1000 of  
my contribution to the DSCC.

Sincerely,

✓

u

97043803659  
The Honorable Bob Kerrey  
Democratic Senatorial Campaign Committee  
430 South Capitol Street, SE  
Washington, D.C. 20003  
June 24, 1996

Dear Senator Kerrey,

On June 21, 1996 I made a \$19,000.00 contribution to the DSCC. I am writing to request that the DSCC tally my previous contribution toward Representative Bob Torricelli who is running for United States Senate from the state of New Jersey. I understand that the DSCC does not accept contributions earmarked for a particular candidate. I further understand that contributions tallied for a particular candidate will be spent for DSCC activities and programs as the committee determines within its sole discretion.

Thank you for your cooperation in tallying my previous contribution.

✓



September 12, 1996

DSCC  
Rita Lewis, Finance Director  
430 South Capitol St. SE  
Washington, DC 20003

Dear Rita,

I understand the SDCC "tally" program which has been explained to me in the following way:

Tally is not an earmarking program, and the DSCC does not accept earmarked contributions. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

Please tally my DSCC contribution of \$20,000.00 to the name of Sen. Barbara Boxer.

Tally 75% Boxer  
25% Women's Council

W

September 27, 1996

Ms. Stephanie Cooper  
Democratic Senatorial Campaign Committee  
430 South Capitol Street, S.E.  
Washington, DC 20003

Dear Stephanie,

In accordance with your letter dated September 25, 1996, please find enclosed a check in the amount of \$15,000.

Per your letter, I will become a member of the Majority Trust Program from now until December 31, 1997.

Under separate cover, I am enclosing some tally sheet requests which, of course, I understand are subject to the discretion of the Democratic Senatorial Campaign Committee.

Kindest regards,

Enclosure: Check No. 1108

X



October 10, 1996

DSCC

Rita Lewis, Finance Director  
430 South Capitol St., SE  
Washington, DC 20003

Dear Rita:

I understand the DSCC "tally" program which has been explained to me in the following way:

Tally is not an earmarking program, and the DSCC does not accept earmarked contributions. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

Please tally my DSCC contribution of \$10,000 as well as my wife contribution for \$10,000 to the name of Senator Barbara Boxer.

Sincerely,

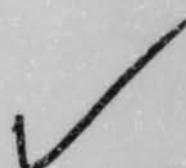
Enclosure



X

October 11, 1996

DSCC  
Rita Lewis, Finance Director  
430 S. Capitol St., SE  
Washington, DC 20003



Dear Rita:

I understand the DSCC "tally" program which has been explained to me in the following way:

Tally is not an earmarking program, and the DSCC does not accept earmarked contributions. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

Please tally my DSCC contribution of \$10,000 to the name of Senator Barbara Boxer.

With kind regards,

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

OCT 24 4 14 PM '96

In the Matter of

)

)

MUR 3620

Verifying Compliance with a  
Conciliation Agreement

)

)

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On September 27, 1996, the National Republican Senatorial Committee ("NRSC") filed an Emergency Motion for Civil Enforcement of the Conciliation Agreement, alleging that the Democratic Senatorial Campaign Committee ("DSCC") has knowingly and willfully violated the remedial provisions of the conciliation agreement in MUR 3620. At its October 1, 1996, Executive Session, the Federal Election Commission ("Commission") decided to forward the NRSC's motion to the DSCC and to wait for a response from the DSCC before determining how to proceed in this matter. On October 2, 1996, a copy of the motion was hand-delivered to the DSCC with a letter stating that the DSCC would have 15 days to respond to the motion, and once the Commission received a response "it will determine what further action is appropriate including whether to go through the enforcement process or to seek immediate enforcement of the conciliation agreement in court." General Counsel's letter to Robert F. Bauer, October 2, 1996. The Commission received the DSCC's Memorandum in Opposition to the National Republican Senatorial Committee's Motion for Civil Enforcement on October 17, 1996.

At issue in MUR 3620 was whether certain contributions made to the DSCC and tallied to the DSCC accounts of various Democratic Senate candidates during the 1991-

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92 and 1993-94 election cycles were actually earmarked to those candidates. On August 15, 1995, the Commission accepted a signed conciliation agreement from the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, and took no further action against the candidates. Besides requiring the payment of a \$75,000 civil penalty, which the DSCC paid, the conciliation agreement required the following remedial action:

The DSCC agrees to implement the following remedial steps:

a. For contributions to the DSCC that appear to be earmarked, the DSCC will refund the contributions or forward the contributions to the designated candidate, in accordance with 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 102.8, 110.6(b)(2)(iii), and 110.6(c)(1).

b. On an on-going basis, the DSCC will provide additional education and training to DSCC staff and participants in the tally program, including the staff of Democratic senate candidates, which will emphasize that: (1) DSCC does not accept contributions earmarked for a particular candidate; (2) tallied contributions will be spent for DSCC activities and programs as the Committee determines within its sole discretion; and (3) contributors must be advised of (1) and (2) above when the DSCC and tally program participants solicit tallied contributions.

c. The DSCC will utilize standard language in its solicitations pertaining to the tally program and, as part of its education and training, will instruct its tally participants to include this language in solicitations distributed by such candidates, their committees and their agents. This language will provide, in substance, that the DSCC does not accept contributions earmarked for a particular candidate and that tallied contributions will be used as the DSCC determines in its sole discretion. At a minimum, the language will state that: "The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion."

d. The DSCC will implement reasonable procedures to review DSCC and Democratic Senate candidate fundraising solicitations pertaining to the tally program to ensure that the solicitations cannot be reasonably read to solicit earmarked contributions, in accordance with the requirements of Section VI(2)(b)-(c) of this agreement.

Conciliation Agreement at Section VI, Paragraph 2.

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For the reasons given below, this Office recommends that the Commission open an inquiry and conduct a limited investigation into the alleged violations of the conciliation agreement.

## II. ANALYSIS

### A. NRSC Motion

The NRSC's central allegation is that the DSCC has not substantially altered its tally program during the current election cycle to comply with the remedial requirements of the 1995 conciliation agreement. Specifically, the NRSC states: "But actions speak louder than words; the DSCC continues to use the tally program as it has in prior election cycles to circumvent federal contribution limitations by soliciting and accepting illegal earmarked contributions disguised as legitimate contributions to the DSCC, and then funneling such funds to the 'tallied' candidate in the form of coordinated expenditures." NRSC motion at 14.

Most of the material attached to the NRSC's motion relates to Senator Carl Levin's participation in the tally program.<sup>1</sup> While much of this material merely shows that Senator Levin participated in the tally program,<sup>2</sup> some of it provides information that raises questions as to whether the DSCC may have violated the conciliation agreement.

<sup>1</sup> In the following discussion, all page references to documents submitted by the NRSC as part of its motion are located at Attachment 1f of the General Counsel's Report in MUR 3620 dated September 27, 1996. DSCC statements and document references appear in the DSCC's Memorandum in Opposition to the National Republican Senatorial Committee's Motion for Civil Enforcement and the attachments to that memorandum, which the Commission received on October 17, 1996.

<sup>2</sup> For instance, the NRSC attached "call sheets" commenting on past DSCC tally contributors. Attachment 1f at 8-18. Although the NRSC claims that these show the DSCC's intended method of making tally phone calls, these call sheets were generated in



The NRSC submitted two letters signed by Senator Carl Levin and produced by his committee, respectively dated October 9 and December 29, 1995. Attachment 1f at 6 and 7. The first, a letter to the Chrysler Corporation Nonpartisan PAC, describes a DSCC dinner and states:

Your support of the DSCC is very important to me. It would be a tremendous help to me if you would buy a ticket or a table and credit your contribution to me. . . . This fundraising event is crucial to my reelection effort next year. The DSCC maintains a record (a 'tally') of how much money each candidate helps to raise for the Committee. The amount of money to be spent by the DSCC on my behalf is based in part on my tally, among other factors, like my likelihood of winning and my need for DSCC funds. It would be a big help if on the response card you would credit your contribution to me and if you want, request to sit at my table.

*Id.* at 6 (Emphasis added).

The second letter, to the National Structured Settlements PAC, describes Senator Levin's race as likely to be tremendously expensive, and states:

The DSCC maintains a record (a 'tally') of how much money each candidate helps to raise for the Committee. The amount of money to be spent by the DSCC on behalf of the party nominee is based on the nominee's tally record and, among other factors, the nominee's likelihood of winning and need for DSCC funds. That's why I'm hoping you will be able to help me in a very specific way: would you be able to tally all or part of your 1996 DSCC contribution to me? I would greatly appreciate it.

*Id.* at 7. The NRSC claims that both of these letters solicit earmarked contributions and the intent to solicit such contributions is not negated by language stating that the amount tallied is only one of the factor the DSCC considers when deciding how much money it

---

the Spring of 1995, before the conciliation at issue in MUR 3620 was signed. The NRSC included tally reports from the DSCC to Senator Levin, showing the amount of money that was tallied in his name and comparing that to the amount of funds that could be allocated. *Id.* at 23-32. This comparison by itself does not substantially contribute to the belief that the DSCC violated the conciliation agreement.

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will spend on Senator Levin's campaign. Because these letters fail to contain the required disclaimer, the NRSC also claims that these letters show that the DSCC has failed to implement procedures to review candidate solicitations for conformity with the conciliation agreement.

The NRSC also submitted letters from various tally contributors which allegedly showed contributor intent to make earmarked contributions. Two were letters from Lawrence O'Brien to Senator Levin dated June 21 and August 5, 1996. Attachment 1f at 19-20. The first letter states that "at the end of the [Hatfield] dinner, I mentioned that I am a participant in the DSCC Majority Trust program and perhaps could be of some help via that mechanism. By letter dated June 20, 1996, a Majority Trust 'tally' to the Levin campaign in the amount of \$1,500 has been made." *Id.* at 19. The second letter states "by letter dated June 20, 1996, a DSCC 'tally' in the amount of \$1,500 was made to your campaign. A file copy of my letter to you informing you of that is enclosed, just in case there was any confusion." *Id.* at 20. The NRSC states that this O'Brien correspondence is proof of the contributor's intent to circumvent the contribution limits and demonstrates the DSCC's intent to accept earmarked contributions.

The NRSC also included two newspaper articles with its motion, one from the Rocky Mountain News and the other from the Associated Press Report. *Id.* at 34-35 and 40-41. The first describes a 1996 DSCC Winter retreat and quotes a letter to Democratic Senators and Senate candidates from the DSCC Chairman, Senator Bob Kerrey. According to the newspaper article, the letter to Colorado candidates states: "As you know, the DSCC is allowed to allocate \$325,000 to the Colorado Senate race . . . . I'm

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asking you as well as the other Colorado Senate candidates to commit to raising \$10,000 toward this weekend." Without directly quoting from the letter, the newspaper goes on: "The funds are 'crucial' if the DSCC is to fully fund Democratic Senate nominees. [Senator Kerrey] also reminds the candidates and his donors that the money raised for the DSCC can be earmarked right back to the candidate. Presuming, of course, he or she wins the primary." *Id.* at 34 (Emphasis added).

An Associated Press article about the Illinois Senate race describes an attack by Al Salvi, the Republican candidate, on Dick Durbin, the Democrat. Mr. Durbin previously had attacked Mr. Salvi for accepting tobacco money, and Mr. Salvi responded that Mr. Durbin was a hypocrite for taking money from the DSCC which in turn also took money from tobacco interests. Mr. Durbin is then quoted: "The only way the Democratic Senatorial Campaign Committee money goes to me is if I raise the money and it is tallied to me . . . ." *Id.* at 40. The NRSC claims that these articles demonstrate that the DSCC has knowingly and willfully continued to accept earmarked contributions with the intent of funneling them back to the designated candidate in the form of coordinated expenditures.

On October 1, 1996, the NRSC filed a formal complaint known as MUR 4490, naming the DSCC as well as 35 Democratic Senate candidates "for conspiring to raise illegal and excessive earmarked contributions to fund their races this fall." MUR 4490, Complaint at 2. This complaint (as well as an additional complaint in MUR 4502 filed on October 8, 1996 which named one additional Democratic Senate candidate as a respondent) is being handled routinely by the Central Enforcement Docket. While the

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complaint in MUR 4490 and the motion in MUR 3620 essentially cover the same allegations and are based on the same information, the complaint attempts to demonstrate violations of the Federal Election Campaign Act of 1971, as amended, ("Act" or "FECA"). The motion attempts to use the information to demonstrate a knowing and willful violation of the conciliation agreement.

Although most of the exhibits to the motion and the complaint are identical, the complaint in MUR 4490 also included a statement allegedly taken from a September 25, 1996 interview with Victor Morales, Democratic Senate candidate from Texas. The print-out merely provides the following questions and answers. Question: "How much money have you raised?" Answer: "Totally, how much have we raised? I think over half a million. About \$600,000." Question: "And how much have you got now ready to spend?" Answer: "I think we have about a little over \$200, almost \$300,000. And then there's some tally money of about \$150,000. Tally money that, you know, people have tallied in my name to the DSCC." Complaint, Exhibit 20. This second question and answer was also quoted in an October 9, 1996 Washington Post article about the tally system.

#### **B. DSCC Response to Motion**

In the cover letter to its Memorandum in Opposition to the NRSC's Motion for Civil Enforcement, the DSCC claims that it "has set out in great detail overwhelming and conclusive proof that this Motion is absolutely without merit and should be dismissed immediately." DSCC letter to the Commission, October 17, 1996. The DSCC also states

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that the NRSC's motion is frivolous and if submitted to a federal court would be subject to sanctions under Rule 11 of the Federal Rules of Civil Procedure.

The DSCC provides background on the tally program<sup>3</sup> and explains its interpretation of the conciliation agreement in MUR 3620. The DSCC states:

In sum, while acknowledging that mistakes had been made in the past, the conciliation agreement clearly contemplated that the DSCC would continue in the future to operate its tally program. To do so, however, the DSCC agreed to abide by four of the remedial steps required by the conciliation agreement. First, any contributions that appear earmarked on their face are returned to the contributor. Second, on an ongoing basis, the DSCC has provided education and training to its staff and the staff of its participating campaigns. That training has emphasized that the DSCC does not accept earmarked contributions, that tallied contributions are spent on all DSCC activities and programs as the DSCC determines within its sole discretion, and that campaigns must advise potential tally contributors about these facts. Third, the DSCC has utilized the standard language that the parties agreed upon in its tally solicitations. Finally, the DSCC has implemented a reasonable procedure to review DSCC and candidate fundraising solicitations for the tally program to ensure that they do not inadvertently solicit earmarked contributions.

DSCC Response at 3-4.

Specifically, the DSCC comments on some of the information material to the NRSC's motion. The DSCC insists that the solicitation letters from Senator Levin to the Chrysler Corporation Nonpartisan PAC and to the National Structured Settlements PAC do not violate the conciliation agreement, because "nothing in either of these letters . . . suggests that Senator Levin or his campaign impermissibly solicited earmarked contributions." Response at 11. The DSCC states that "it is worth noting that these were

<sup>3</sup> The DSCC continues to insist that the tallying program in place between 1991 and 1994, the subject of MUR 3620, was not an earmarking program, and that statements made by the NRSC in its motion do not comport with what was agreed to in the conciliation agreement.

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not DSCC-initiated solicitations. Since the conciliation agreement only requires the DSCC to utilize standard language in its solicitations pertaining to tally, the NRSC is incorrect in citing this as an example of the DSCC violating the agreement." Id.

The DSCC responds to letters from contributors in which the contributors tallied contributions to Senator Levin. The DSCC states that "none of these letters make any mention of earmarking contributions to the Levin campaign, or even suggests an intent to earmark the contributions. To the contrary, all four of the letters clearly state their intention to tally their contributions to Levin." Id. at 12.

The DSCC refers to the Rocky Mountain News article summarizing Senator Kerrey's letter to the Democratic Senate candidates from Colorado. The DSCC says that the summary in the editorial indirectly quoting Senator Kerrey as stating "that the money raised for the DSCC can be earmarked right back to the candidates" is inaccurate. The DSCC attaches a letter to their response from Senator Kerrey which does not include a phrase approximating the quoted language. Response at Tab H. The DSCC also states that in reference to the article quoting Congressman Durbin, "this statement was to indicate to the press that [Durbin] neither solicits money for his own campaign from tobacco interests nor solicits money from tobacco interests for the DSCC. Obviously such statements by a candidate cannot cause the DSCC to violate the agreement. . . ." Id. at 15.

The DSCC explains how it has complied with the various provisions of the conciliation agreement. To satisfy the provision requiring the refund or forwarding of earmarked contributions (Section VI (2)(a) of the conciliation agreement), the DSCC

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states that its internal procedures require that before any tally contribution is deposited into a DSCC account, it must be clear that the contribution is not earmarked. If a check is received with indicia of earmarking it is returned uncashed to the contributor and is not reported. "Under this new, stricter policy, for example, any check that includes a memo line bearing the name of the candidate is returned, uncashed, unless the check is accompanied by something that clearly indicates that the contributor understands the tally program and does not intend the contribution to be earmarked." *Id.* at 18. The DSCC has included this instruction in memoranda distributed to the DSCC staff and Democratic Senate candidates in April of 1996. Response at Tabs I and J. The DSCC explains that numerous checks have been returned to contributors, and there "is no question that the DSCC's policy of returning contributions more than meets its obligations under the conciliation agreement." *Id.* at 20.

According to the response, to comply with the education and training provision of the conciliation agreement, Section VI (2)(b), the DSCC's outside counsel has conducted both in person seminars and conference calls with DSCC staff and Senate campaign staff on the requirements of the tally program. Counsel also consults regularly with the DSCC's fundraising staff as well as candidate fundraisers to answer questions about the tally program. As part of its training the DSCC distributed the memoranda previously referred to which explain the requirements of the tally program. Response at Tabs I and J.

In addition, the DSCC distributes the following explanation to contributors who are confused about the nature of the tally program:

DSCC funds are allocated to targeted Democratic Senate candidates by the Allocation Committee of the DSCC. This committee sets the DSCC allocation policies at its discretion. In allocating funds to candidates, many factors are considered by the DSCC's Senate Allocation Committee such as need, winability, latest polling figures, finances on hand and the amount of funds tallied to the DSCC for that specific candidate. The DSCC maintains a record (a "Tally") of how much money each candidate helps to raise for the Committee. The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent on DSCC activities and programs as the Committee determines within its sole discretion.

Response at 22 and Tab N (with possible emphasis in original).

Claiming to have consistently used the disclaimer required by the conciliation agreement, including use of it in the "Take Back the Senate Dinner" invitation attached to the NRSC motion, the DSCC attached other solicitations to the response in which it also utilized the disclaimer.

The DSCC states that it has also implemented reasonable procedures to review its own fundraising solicitations as well as those of Democratic Senate candidates. The DSCC included in the April 1996 memorandum to DSCC staff the statement that "the DSCC should review tally fundraising solicitations, when possible, to make sure they comply with the requirements [in the conciliation agreement.]" Response at Tab I. The memorandum to Democratic Senate candidates similarly states that "Candidates are encouraged, when possible, to have the DSCC review tally fundraising solicitations." Response at Tab J. The DSCC claims this procedure has been followed as evidenced by the fact that the disclaimer has been included in all DSCC-initiated solicitations. The DSCC states further that it "has also made significant efforts to review campaign tally

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solicitations to ensure that they, too, abide by the agreements requirements." Response at 24.

To its response the DSCC attached a fax cover sheet, edited tally solicitation from Dick Durbin's campaign, and a note inserted by a DSCC employee stating that "if you want to add the 'tally' option you must include the language attached," referencing the disclaimer language. Response at Tab S. Notably, this material from the Durbin campaign contains a line from a fax machine stating that it was faxed on October 9, 1996, and the fundraiser was on October 12, 1996. The DSCC employee concluded her note to the Durbin campaign by stating: "If you can do this, please fax to me so I can show my lawyer, too." Response at S. The DSCC states that "this type of careful review of candidate solicitations is the DSCC's standard policy." Response at 25.

The DSCC concludes its response by stating that contributors fully understand the tally program and understand that the tally program is not earmarking but a way in which DSCC contributors can indicate their support for a particular candidate. According to the DSCC, the NRSC has failed to provide any information that the DSCC has not lived up to the conciliation agreement.

### C. Analysis

Based on the DSCC's response it appears that the DSCC has made efforts to comply with the conciliation agreement's remedial provisions. For instance, the DSCC's policy that contributions which bear any indicia of earmarking, including a memo line entry on a check bearing the name of the candidate, be returned to the contributor, meets the requirement that earmarked contributions be refunded to the contributor or forwarded

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to the candidate and reported. Conciliation Agreement at VI, Paragraph 2(b). Similarly, it appears that recent solicitations produced by the DSCC contained the required disclaimer provision. Conciliation Agreement at VI, paragraph 2(c). The DSCC also did mention the conciliation agreement and its requirements at certain training programs. Nonetheless, based on the information contained in the NRSC's motion and the DSCC's response, there is insufficient information to verify that the DSCC has fully complied with the conciliation agreement, and numerous questions remain.

The letters from Senator Levin to the Chrysler Corporation Nonpartisan PAC and to the National Structured Settlements PAC contain the following statements: "This fundraising event is crucial to my reelection effort next year. . . . It would be a big help if on the response card you would credit your contributions to me . . . ." Chrysler Corporation Nonpartisan PAC letter. The other concludes by stating: "That's why I'm hoping you will be able to help me in a very specific way: would you be able to tally all or part of your 1996 DSCC contribution to me." National Structured Settlements PAC letter.

These statements are quite similar to those taken from DSCC and Democratic candidate tally solicitations produced between 1991 and 1994, which were included in Section IV, Paragraph 15 of the conciliation agreement. According to the conciliation agreement, those quotations could "be fairly read to solicit earmarked contributions and did not contain further clarification and explanation to avoid such a reading."

Senator Levin's assertion that the amount of proceeds raised for a candidate is only one factor taken into account by the DSCC in allocation party funds is insufficient to negate

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the earmarking quality of these solicitations. Moreover, similar weak disclaimer language was included in some of the letters referred to in Paragraph 15 of the conciliation agreement which were the basis of the DSCC's violations in MUR 3620.

These letters do not appear to contain the required disclaimer, pursuant to Part VI (2)(c) of the conciliation agreement. Senator Levin's October 9, 1995, letter does refer to a response card which was not produced by the NRSC; however, even if the response card included the agreed upon disclaimer language, the Commission may still wish to consider whether such a disclaimer changed the impression that the letters were soliciting earmarked contributions.<sup>4</sup> While the DSCC is correct in noting that these were not DSCC-initiated solicitations, the DSCC is incorrect in asserting that "the conciliation agreement only requires the DSCC to utilize standard language in its solicitations pertaining to the tally." Response at 11. In fact, the conciliation agreement requires the DSCC to instruct its tally participants to include the disclaimer language in solicitations distributed by candidates, committees, and their agents. The DSCC was also required to

<sup>4</sup> These two solicitations, which appear to aggressively solicit earmarked contributions, contrast with one distributed directly by the DSCC. The NRSC attached an invitation for the DSCC's "Take Back the Senate Dinner," which took place on March 6, 1996. Attachment 1f at 1-5. Enclosed with the invitation were contributor cards for the DSCC with a space to indicate "tally to Senator \_\_\_\_" or "please tally my contribution to." *Id.* at 3 and 4. The last page of this invitation includes a list of disclaimers, one of which states: "The DSCC maintains a record (a 'Tally') of how much money each candidate helps raise for the Committee. The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion." *Id.* at 5. Because of the inclusion of this language, and the absence of language requesting the solicitation of earmarked contributions, this solicitation does not appear to violate the conciliation agreement. As part of its response, the DSCC included other solicitations which it had produced, all containing the required disclaimer language. Response at Tabs P, Q, and R.

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implement "reasonable procedures to review" candidate fundraising solicitations pertaining to the tally program. These letters provide some indication that the DSCC may have failed to comply totally with both of these provisions. Moreover, because Senator Levin's campaign produced these two solicitations, it appears that the DSCC also may have violated the conciliation agreement by failing to adequately educate and train participants in the tally program, including the staff of Democratic Senate candidates, about the requirements of the tally program. Conciliation Agreement at VI(2)(b), (c), and (d).

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Although the letters from Mr. O'Brien to Senator Levin, expressing Mr. O'Brien's eagerness to help Senator Levin via the tally program, do not directly demonstrate that the conciliation agreement was violated, Mr. O'Brien clearly wanted to convey to Senator Levin the impression that he was sending a tallied contribution to the DSCC specifically to aid Senator Levin. The DSCC merely dismisses this correspondence by stating there was no suggestion of an intent to earmark contributions. In fact, by leaving the impression that the tally program was one of the vehicles by which he could provide assistance to the Levin campaign, Mr. O'Brien appears to have earmarked a contribution to Senator Levin. If the contribution was earmarked, the DSCC did not report and forward it as required by Part VI (2)(a) of the conciliation agreement.

A Rocky Mountain News article paraphrased a letter from Senator Kerrey to Democratic Senate candidates from Colorado as stating that tallied "money raised for the DSCC can be earmarked right back to the candidates." The DSCC states persuasively that the indirect quote attributed to Senator Kerrey is inaccurate, and the DSCC supplied

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what it said was the original letter which does not refer to earmarked funds in any fashion. Response at Tab H. Candidate Dick Durbin is quoted by Associated Press as stating "the only way the Democratic Senatorial Campaign Committee money goes to me is if I raise the money and it is tallied to me." Similarly, Victor Morales, when asked how much campaign funding he had on that date, responded: "I think we have about a little over \$200, almost \$300,000. And then there's some tally money of about \$150,000. Tally money that, you know, people have tallied in my name to the DSCC." Because it was attached to the complaint and not to the motion, the DSCC did not address the statement made by candidate Morales. The DSCC claims correctly that statements made by a candidate cannot cause the DSCC to violate the conciliation agreement.

While the quotation attributed to Senator Kerrey appears to be inaccurate, the statements made by Representative Durbin and Mr. Morales, if accurately reported, both suggest that the two men believe that money tallied in a candidate's name is directly returned to the candidate's campaign. While these types of statements cannot directly substantiate a belief that the conciliation agreement has been violated, the statements may reflect the DSCC's failure to adequately train and educate DSCC participants on the requirements of the tally program.

The memoranda to the DSCC and to the 1996 Democratic Senate Candidates, response at Tabs I and J, which the DSCC uses to demonstrate compliance with the training provisions of the conciliation agreement appears to contain a print date of April 29, 1996. In explaining how these memoranda were distributed, the DSCC states "at the beginning of the 'tally' cycle, in April, 1996, DSCC drafted and circulated memoranda to



both DSCC and candidate fundraising staff that clearly and plainly spelled out the requirements of the tally program." DSCC response at 18-19.

Tally reports were distributed to Senator Levin (and presumably other Democratic Senate candidates) in January of 1996, and as evidenced by the letters discussed above, he solicited tallied contributions in 1995. Moreover, the DSCC was required to implement the remedial provisions 30 days after the conciliation agreement was signed, and the statement by the DSCC in its response and the DSCC's production of these memoranda suggest that the DSCC may have waited eight months to take steps to comply with this aspect of the conciliation agreement.

Pursuant to Part VI, Section 2(d) of the conciliation agreement, the DSCC was required to "implement reasonable procedures" to review DSCC and Democratic Senate candidate fundraising solicitations. The April 29 memoranda to the DSCC and the Democratic Senate candidates state that the "DSCC should review candidate tally fundraising solicitations, when possible, to make sure they comply with the requirements set forth above." *Id.* The "when possible" language which appears in these memoranda suggests that it was solely the responsibility of the candidates to forward questionable campaign tally solicitations to the DSCC, and not the responsibility of the DSCC to do more to encourage the review of such solicitations. This type of review does not appear to constitute implementation of a reasonable procedure to review such solicitations.

Moreover, the only information submitted by the DSCC in its response to the emergency motion supposedly demonstrating compliance with this review provision was the October 9, 1996 review of a Durbin campaign solicitation, edited (and changed

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substantially) after the filing of the emergency motion. The DSCC received notification of the motion on October 2, 1996. The DSCC's use of the Durbin material as an example of compliance with the review requirement raises the possibility that tally solicitations produced by Democratic Senate candidates were not reviewed before the filing of the motion.

#### D. Investigation

Because there is insufficient information to verify that the DSCC has fully complied with the conciliation agreement, this Office recommends that the Commission open an inquiry in MUR 3620 to ascertain whether the DSCC has violated the conciliation agreement. This proposed action is consistent with the FECA, even though the Act states that "a conciliation agreement, unless violated, is a complete bar to any further action by the Commission." 2 U.S.C. § 437g(a)(4)(A)(i). The Act goes on to state that in "any case in which a person has entered into a conciliation agreement with the commission under paragraph (4)(A), the Commission may institute a civil action for relief under paragraph (6)(A) if it believes that the person has violated any provision of such conciliation agreement." Nothing prohibits the Commission from substantiating or dispelling a belief that a conciliation agreement may have been violated by using the specific investigatory powers granted to it in the FECA at 2 U.S.C. § 437d(a).<sup>5</sup>

<sup>5</sup> The specific powers which may be appropriate to this inquiry are the powers to "require by special or general orders, any person to submit, under oath, such written reports and answers to questions as the Commission may prescribe," 2 U.S.C. § 437d(a)(1); "to require by subpoena, signed by the chairman or the vice chairman, the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties," 2 U.S.C. § 437d(a)(3); to take depositions, 2 U.S.C. § 437d(a)(4); and "to conduct investigations and hearings expeditiously to encourage voluntary compliance," 2 U.S.C. § 437d(a)(9). These powers



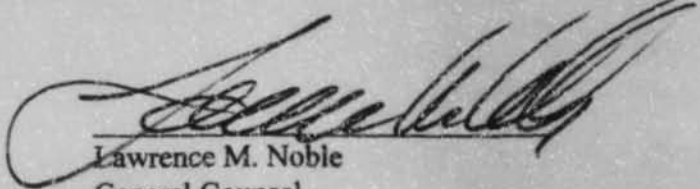
The inquiry proposed in the instant matter would consist of a limited investigation, initially directing the DSCC to answer specific questions about the DSCC's continued operation of the tally program. This investigation might well prove to the Commission's satisfaction that the DSCC has complied with the conciliation agreement's remedial provisions. Alternatively, the investigation might contribute to the belief that the DSCC has violated the conciliation agreement. Accordingly, this Office recommends that the Commission approve the attached Subpoena for the Production of Documents and Answers to Interrogatories directed to the DSCC, attachment 1, and the attached letters which are to be sent to the DSCC and the NRSC. Attachments 2 and 3. The proposed letters explain that the Commission is initiating an inquiry into the alleged violations, because it has insufficient information to ascertain whether the DSCC has fully complied with the conciliation agreement in MUR 3620.

### III. RECOMMENDATIONS

1. Open an inquiry to verify compliance with the conciliation agreement in MUR 3620.
2. Approve the attached Subpoena for the Production of Documents and Answers to Interrogatories directed to the Democratic Senatorial Campaign Committee and Paul Johnson, as treasurer, and the attached letters.

Date

10/24/96

  
Lawrence M. Noble  
General Counsel

(footnote continued)

apply to enforcement actions, audits, regulations hearings, and other functions of the Commission. But see the Commission's specific power "to render advisory opinions under section 437f of this title." 2 U.S.C. § 437d(a)(7).

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## Attachment:

1. Proposed Subpoena for the Production of Documents and Answers to Interrogatories
2. DSCC Notification Letter
3. NRSC Notification Letter

Attorney assigned: Stephan O. Kline

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) MUR 3620  
Verifying Compliance with a )  
Conciliation Agreement )

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on October 29, 1996, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 3620:

1. Open an inquiry to verify compliance with the conciliation agreement in MUR 3620.
2. Approve the Subpoena for the Production of Documents and Answers to Interrogatories directed to the Democratic Senatorial Campaign Committee and Paul Johnson, as treasurer, and the letters recommended in the General Counsel's October 24, 1996 report

(continued)

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Federal Election Commission  
Certification for MUR 3620  
October 29, 1996

Page 2

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

Attest:

10-30-96  
Date

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

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 1, 1996

Benjamin L. Ginsberg, Esq.  
Patton Boggs, L.L.P.  
2550 M Street, N.W.  
Washington, D.C. 20037-1350

RE: MUR 3620  
Democratic Senatorial Campaign  
Committee and Paul Johnson, as treasurer

Dear Mr. Ginsberg:

The Federal Election Commission ("Commission") received the Democratic Senatorial Campaign Committee and Paul Johnson, as treasurer's, ("DSCC") Memorandum in Opposition to the National Republican Senatorial Committee's ("NRSC") Motion for Civil Enforcement on October 17, 1996. Thereafter, the Commission voted to initiate an inquiry into the violations of the conciliation agreement entered into by the Commission and the DSCC in August of 1995 as alleged by the NRSC, because there was insufficient information to verify that the DSCC has fully complied with the conciliation agreement.

Please note that this action is considered confidential by the Commission and should not be made public. If you have any questions, please contact Stephan Kline, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

A handwritten signature in cursive script, reading "Lawrence M. Noble", is written over a horizontal line.

Lawrence M. Noble  
General Counsel

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

November 1, 1996

Robert F. Bauer, Esq.  
Perkins Coie  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2011

RE: MUR 3620  
Democratic Senatorial Campaign  
Committee and Paul Johnson, as treasurer

Dear Mr. Bauer:

The Federal Election Commission ("Commission") received the Democratic Senatorial Campaign Committee and Paul Johnson, as treasurer's, ("DSCC") Memorandum in Opposition to the National Republican Senatorial Committee's ("NRSC") Motion for Civil Enforcement on October 17, 1996. Thereafter, the Commission voted to initiate an inquiry into the violations of the conciliation agreement entered into by the Commission and the DSCC in August of 1995 as alleged by the NRSC, because there was insufficient information to verify that the DSCC has fully complied with the conciliation agreement.

Accordingly, pursuant to this inquiry, the Commission has issued the attached Interrogatories and Request for Production of Documents requiring the DSCC to provide information which will assist the Commission in evaluating compliance with the conciliation agreement.

It is required that the DSCC submit all answers to questions under oath within 30 days of your receipt of this subpoena and order. If you have any questions, please contact Stephan Kline, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Lawrence M. Noble  
General Counsel

Enclosure  
Subpoena and Order

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Verifying Compliance with a  
Conciliation Agreement

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MUR 3620

**SUBPOENA TO PRODUCE DOCUMENTS**  
**ORDER TO SUBMIT WRITTEN ANSWERS**

TO: Democratic Senatorial Campaign Committee and  
Paul Johnson, as Treasurer  
c/o Robert F. Bauer, Esq.  
Perkins Coie  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2011

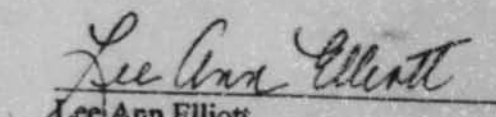
Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

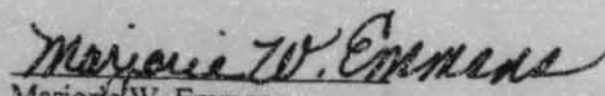
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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set her hand in Washington, D.C. on this 31<sup>st</sup> day of October, 1996.

For the Commission,

  
Lee Ann Elliott  
Chairman

ATTEST:

  
Marjorie W. Emmons  
Secretary to the Commission

Attachments  
Questions and Document Requests

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### **INSTRUCTIONS**

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from August 21, 1995 to the present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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### DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondents in this action to whom these discovery requests are addressed, including all persons who act in any capacity for the respondents or in any relationship to the respondents including all officers, employees, agents or attorneys and/or others who act on the respondents' behalf.

The "DSCC" shall mean the Democratic Senatorial Campaign Committee, including all persons who act in any capacity for the DSCC or in any relationship to the DSCC, including officers, employees, volunteers, agents, attorneys and/or others who act on behalf of the DSCC.

"Democratic Senate candidate" shall refer to any Democratic candidate for election to the office of U.S. Senator after the 1994 general election campaign, including all persons who act in any campaign capacity on behalf of the Democratic Senate candidate or in any relationship to the Democratic Senate candidate with respect to the campaign, including officers, employees, volunteers, agents, attorneys and/or others who act on behalf of the Democratic Senate candidate and/or his or her campaign committee.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Tally program," "tally sheet" or "tally" shall refer to the fundraising program operated by the DSCC as a means of raising funds on behalf of the Democratic Senate candidate which is the subject of a conciliation agreement signed by the DSCC and the Commission in August of 1995.

A "tallied contribution" shall refer to a contribution to the DSCC that a contributor has indicated is to be tallied for a particular candidate.

"Tally report" shall refer to lists of DSCC contributors who have made tallied contributions to a particular Democratic Senate candidate.

"Conciliation agreement" shall refer to the conciliation agreement in MUR 3620 that was signed by representatives from the DSCC and the Commission in August of 1995.

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"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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**BEFORE THE FEDERAL ELECTION COMMISSION**  
**INTERROGATORIES AND REQUESTS FOR DOCUMENTS**

MUR 3620  
Democratic Senatorial Campaign Committee and  
Paul Johnson, as treasurer

1. Please describe the procedures the DSCC has implemented since September 1, 1995 to comply with section VI(2)(a) of the conciliation agreement. If the procedures are written, please provide copies of such procedures. Please identify all persons employed by the DSCC who examine tallied contributions to determine whether they appear to be earmarked.
  2. Please describe the education and training the DSCC has conducted since September 1, 1995 to satisfy section VI (2)(b) of the conciliation agreement.
  3. Whether the education and training referred to in Interrogatory 2 was in the form of a program, a conversation, correspondence, or in some other method conducted by the DSCC, please provide the following information for each action taken to educate and train:
    - a. Describe the format (i.e., a formal program, informal telephone conversation, or other form of communication) used for each action taken to educate and train;
    - b. State where and when each action took place;
    - c. Identify all individuals who initiated or led the action to educate and train, on behalf of the DSCC, and describe the role each such individual played in the education and training generally and for the particular action in question;
    - d. Identify Democratic Senate candidates individually and the staff of Democratic Senate candidates who participated in each action;
    - e. Describe the topics discussed in each education and training action which relate to the tally;
    - f. Produce any materials distributed to participants in connection with each education and training action;
    - g. State who prepared such materials distributed in the education and training action;
- and

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h. Produce copies of any tapes, transcripts, minutes, or notes retained by the DSCC which relate to each education and training action.

4. Describe how the education and training provided by the DSCC to comply with section VI(2)(b) of the conciliation agreement has changed from the education and training conducted by the DSCC prior to the effective date of the conciliation agreement.

5. Please provide copies of any documents explaining the tally program or explaining the implementation of the conciliation agreement which have been distributed since September 1, 1995, to the DSCC, Democratic Senate candidates, staff of Democratic Senate candidates, fund-raisers for Democratic Senate candidates, or potential contributors. For each document provide the following information:

- a. State who wrote and edited the document;
- b. State when the document was first distributed;
- c. State how the document was distributed; and
- d. List all recipients of the document.

6. Please describe the procedures the DSCC has implemented since September 1, 1995 to comply with section VI(2)(c) of the conciliation agreement. If the procedures are written, please provide copies of such procedures.

7. Please describe the procedures the DSCC has implemented since September 1, 1995, to review DSCC and Democratic Senate candidate fundraising solicitations pertaining to the tally program in accordance with section VI(2)(d) of the conciliation agreement, and provide the following information:

- a. If the procedures are written, provide a copy of the procedures;
- b. Identify the individuals who created the procedures and who are responsible for enforcing them;
- c. Describe how these procedures are communicated to DSCC staff and Democratic Senate candidates; and
- d. List all recipients of the procedures.

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8. For each tally solicitation reviewed by the DSCC as part of the procedures referred to in Interrogatory 7, please provide the following information:

- a. Provide a copy of the solicitation both in its original and final versions;
- b. Identify the individual who reviewed the solicitation on behalf of the DSCC;
- c. Provide a copy of all written comments produced by the DSCC reviewer and the author of the solicitation concerning the DSCC's review of the solicitation;
- d. Describe all conversations which took place between the DSCC reviewer and the author of the solicitation, pertaining to the solicitation's conformity with the conciliation agreement requirements; and
- e. State when the solicitation was reviewed by the DSCC.

9. Describe each fundraising solicitation pertaining to the tally program produced since September 1, 1995, which was not reviewed by the DSCC as part of the procedures referred to in Interrogatory 7, and state why the solicitation was not reviewed by the DSCC.

10. Please identify and describe in detail the role of each person who had responsibility, including supervisory responsibility, for approving, implementing, and/or operating the DSCC's tally program since September 1, 1995.

11. Please provide copies of all solicitations for tallied contributions produced by the DSCC since September 1, 1995. Please include any response cards or other information enclosed with each solicitation.

12. Please provide copies of all solicitations for tallied contributions produced by the Democratic Senate Candidates since September 1, 1995 which are in the possession of the DSCC. Please include any response cards or other information enclosed with each solicitation.

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## PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATION  
607 FOURTEENTH STREET, N.W. WASHINGTON, D.C. 20005-2011  
TELEPHONE: 202 628-6600 - FACSIMILE: 202 434-1690

December 4, 1996

Stephan Kline  
Federal Election Commission  
999 E Street, N.W. - 6th Floor  
Washington, D.C. 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
DEC 4 2 55 PM '96

Re: Subpoena in MUR 3620

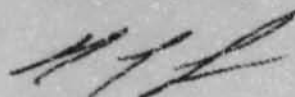
Dear Mr. Kline:

I am writing to follow up our recent conversation regarding a request for an extension to respond to the subpoena for documents and information in MUR 3620. As you know, in its initial submission the DSCC provided a detailed response to the allegations contained in the complaint as well as more than 20 documents that clearly demonstrate its compliance. Nonetheless, in an effort to close this matter once and for all, the DSCC is prepared to respond to the subpoena.

As I told you on the telephone, however, because of the recent election and the DSCC's need to respond to several other NRSC-generated complaints involving both the tally program and other matters, the DSCC has asked me to request an extension of time in which to respond. Specifically, I anticipate having a response no later than close of business Friday, December 13, 1996.

Please do not hesitate to contact me directly at (202) 434-1625 if you require anything further.

Very truly yours,



Marc E. Elias

MEE:dml

[04005-0064/DA963390.012]





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Via Facsimile

December 5, 1996

Mark Elias, Esq.  
Perkins Coie  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2011

Re: MUR 3620  
Democratic Senatorial Campaign  
Committee and Paul Johnson, as treasurer

Dear Mr. Elias:

This is in response to your letter dated December 4, 1996, requesting an extension until December 13 to respond to the Federal Election Commission's Subpoena to Produce Documents and Order to Submit Written Answers in the above-captioned matter. After considering the circumstances presented in the letter and in our conversation, and your representation that you intend to fully comply with the subpoena, the Office of General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on December 13, 1996.

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

Sincerely,

Stephan O. Kline  
Attorney

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## PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
607 FOURTEENTH STREET, N.W. - WASHINGTON, D.C. 20005-2011  
TELEPHONE: 202 628-6600 - FACSIMILE: 202 434-1690

December 13, 1996

Lawrence Noble, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, N.W. - 6th Floor  
Washington, D.C. 20463

Re: MUR 3620

Dear Mr. Noble:

Enclosed are the DSCC's responses to the Commission's request for interrogatories and documents in MUR 3620. With this submission the DSCC once again moves the Commission to promptly dismiss this frivolous motion.

In its last submission to the Commission, the DSCC warned of the consequences to future conciliation processes if a political entity like the NRSC could, for political purposes, initiate an investigation such as this one without any evidence that the conciliation agreement had been violated. Although the DSCC has voluntarily answered the enclosed interrogatories and produced the enclosed documents, there is still not a scintilla of evidence supporting the NRSC's claims that the tally program is unlawful or, more importantly, that the MUR 3620 conciliation agreement was breached. In fact, all of the evidence shows the contrary. The DSCC reminds the Commission that it is not the DSCC's burden to prove compliance but rather the NRSC's (and ultimately the Commission's) burden to prove noncompliance.

Despite these serious misgivings, the DSCC has complied with the Commission's request to produce further documentation and to provide further sworn clarification regarding the tally program. Indeed, the DSCC has produced documents and has provided answers that would otherwise be protected by the attorney-client privilege. As noted in the interrogatory responses, the DSCC is not making a broad waiver of the privilege. However, for purposes of answering these interrogatories and concluding this investigation at this early stage, the DSCC is willing to make the limited waiver that it has. The DSCC has not produced a small number of documents containing attorney notations or edits related to the tally program. It has also not produced documents included by the NRSC in its complaint.

Lawrence Noble, Esq.  
December 13, 1996  
Page 2

The DSCC's decision to take these steps is motivated by a continuing desire to work constructively with the Commission to ensure that all of its practices, including its tally program, comply with the law. The MUR 3620 conciliation process and the agreement it produced was constructive in that it left both the DSCC and the Commission with an objective yardstick with which to measure the tally program. The threat that this yardstick will now be used as a weapon by the DSCC's political adversaries should be of the highest concern, not only to the DSCC but to the Commission as well.

Finally, as always, the DSCC understands its continuing obligation to produce documents responsive to this request. Any such documents will be forwarded promptly to the Commission.

Very truly yours,



Marc E. Elias

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Enclosures

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BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF:

DEMOCRATIC SENATORIAL CAMPAIGN  
COMMITTEE and PAUL JOHNSON, as  
Treasurer

MUR 3620

Respondents.

**RESPONSE OF THE DSCC TO SUBPOENA TO PRODUCE  
DOCUMENTS AND ORDER TO SUBMIT WRITTEN ANSWERS**

Interrogatory No. 1. Please describe the procedures the DSCC has implemented since September 1, 1995 to comply with section VI(2)(a) of the conciliation agreement. If the procedures are written, please provide copies of such procedures. Please identify all persons employed by the DSCC who examine tallied contributions to determine whether they appear to be earmarked.

Answer to Interrogatory No. 1: Under section VI(2)(a) of the conciliation agreement, the DSCC agreed to refund any contributions that appeared to be earmarked to a particular candidate. As a result of this requirement, the DSCC initiated a policy that no contributions that bore indicia of earmarking would be accepted or deposited by the DSCC. Under this new policy, checks that included memo line notes bearing the name of a candidate were returned, uncashed, unless accompanied by something that clearly indicated that the contributors understood the tally program and did not intend the contribution to be earmarked.

This new policy was explained to all DSCC fundraising staff and Democratic Senate candidates, both orally and in writing. For example, at the beginning of the "tally" cycle in April 1996, DSCC counsel drafted and circulated memoranda to both the DSCC and candidate fundraising staff that clearly and plainly spelled out the requirements of the tally program. (Copies of the memoranda distributed to the DSCC and candidate staff are attached at Tabs A and B, respectively.) These memoranda were distributed to all DSCC and candidate fundraisers. Among other things, the memorandum to DSCC staff stated:

Any contribution that is received by the DSCC that appears to be earmarked to a particular candidate must be returned. In past cycles, these contributions were deposited and a form letter was sent to the contributor. This is no longer acceptable. Any check that bears the name of a candidate, including a memo line note such as 'tally to \_\_\_\_\_' or 'for \_\_\_\_\_' must be returned unless it is accompanied by a properly worded letter or response card, signed by the contributor, that indicates the donor understands the tally program[]. The returned check may be accompanied by a proper solicitation for a new contribution.

DSCC memo at 1 (emphasis in original).

The memorandum sent to 1996 Democratic Senate candidates stated the same point slightly differently:

Tally is not an earmarking program; indeed, the DSCC does not accept earmarked contributions. Therefore, any contribution that is received by the DSCC that appears to be earmarked to a particular candidate will be returned. Any check that bears the name of a candidate, including a memo line note such as 'tally to \_\_\_\_\_' or 'for \_\_\_\_\_' will be returned unless it is accompanied by a signed and properly worded letter or response card that indicates that the donor understands the tally program[]. The returned check may be accompanied by a proper solicitation for a new contribution.

Candidate memo at 1 (emphasis in original).

Numerous DSCC employees were responsible for examining tallied contributions to determine whether they appeared to be earmarked. First, and foremost, it was the responsibility of the fundraising staff to ensure that all DSCC contributors understood the tally program and that DSCC did not accept contributions that on their face appeared earmarked. Actual review of tallied contributions was conducted primarily by Darlene Setter, comptroller of the DSCC. In addition, Ms. Setter and others would seek advice of outside counsel, Robert F. Bauer, Judith L. Corley and Marc E. Elias, to determine whether a particular check complied with the requirements of section VI(2)(a) of the conciliation agreement.

**Interrogatory No. 2. Please describe the education and training the DSCC has conducted since September 1, 1995 to satisfy section VI(2)(b) of the conciliation agreement.**



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**Answer to Interrogatory No. 2:** For purposes of responding to this interrogatory only, and without waiving any privilege, the education and training conducted since September 1, 1995 to satisfy section VI(2)(b) of the conciliation agreement was primarily conducted by DSCC's outside legal counsel. On numerous occasions, DSCC's outside legal counsel conducted both in-person seminars and conference calls with DSCC staff and Senate campaign staff regarding the requirements of the tally program. In addition, DSCC's outside counsel regularly consulted with the DSCC's fundraising staff as well as its candidate fundraisers to answer questions and provide instruction regarding the tally program and the conciliation agreement in MUR 3620. For purposes of answering this interrogatory only, and without waiving any privilege, time records indicate calls on this subject ranging from several a day to several a week, to at least two or three times per month. Finally, the DSCC distributed memoranda from its outside counsel setting forth, in clear, plain language, the requirements of the tally program. (Tabs A and B.) Among other statements in those memoranda, fundraising staff are told that "[w]e must tell our candidates and contributors that the DSCC does not accept earmarked contributions and that the tallied contributions are spent for DSCC activities and programs as the Committee determines within its sole discretion."

**Interrogatory No. 3.** Whether the education and training referred to in Interrogatory No. 2 was in the form of a program, a conversation, correspondence, or in some other method conducted by the DSCC, please provide the following information for each action taken to educate and train:

- a. Describe the format (i.e., a formal program, informal telephone conversation, or other form of communication) used for each action taken to educate and train;
- b. State where and when each action took place;
- c. Identify all individuals who initiated or led the action to educate and train, on behalf of the DSCC, and describe the role each such individual played in the education and training generally and for the particular action in question;
- d. Identify Democratic Senate candidates individually and the staff of Democratic Senate candidates who participated in each action;

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- e. Describe the topics discussed in each education and training action which relate to the tally;
  - f. Produce any materials distributed to participants in connection with each education and training action;
  - g. State who prepared such materials distributed in the education and training action;
  - h. Produce copies of any tapes, transcripts, minutes, or notes retained by the DSCC which relate to each education and training action;

Answer to Interrogatory No. 3:

- (a) The DSCC's education and training referred to above took many forms. In addition to the memoranda distributed to DSCC fundraising and campaign staff (Tabs A and B), the education and training also included in-person group programs conducted by DSCC outside counsel, telephone conversations with DSCC fundraising and campaign staff, and pre-scheduled, formal, telephone conference calls with campaign staff.
- (b) Much of the training with DSCC staff took place at DSCC headquarters. On other occasions, it took place via telephone. The education and training took place over an extended period of time, beginning in September 1995 and continuing until the present.
- (c) The education and training was led primarily by attorneys Robert F. Bauer and Marc E. Elias of the law firm of Perkins Coie. Individual members of the DSCC also provided information regarding the tally program to other DSCC personnel and campaigns.
- (d) DSCC cannot identify with specificity each Democratic Senate campaign that participated in each individual action of education and training. However, all 1996 Democratic Senate campaigns received a copy of the memorandum outlining the requirements of the tally

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program (Tab B), and most, if not all, campaigns received some additional education and training from DSCC staff and attorneys regarding the requirements of the tally program.

(e) For purposes of responding to this interrogatory only, and without waiving any privilege, the topics discussed in the education and training actions related to the requirements of the conciliation agreement in MUR 3620. Specifically, the topics discussed in each of these actions are outlined in the attached memoranda to DSCC staff and campaign staff. (Tabs A and B.)

(f) The only materials distributed to participants specifically in connection with the education and training action were the memoranda attached at Tabs A and B.

(g) For purposes of responding to this interrogatory only, and without waiving any privilege, these materials were prepared by Robert F. Bauer and Marc E. Elias of the law firm of Perkins Coie and were distributed by Perkins Coie and DSCC personnel.

(h) None.

**Interrogatory No. 4. Describe how the education and training provided by the DSCC to comply with section VI(2)(b) of the conciliation agreement has changed from the education and training conducted by the DSCC prior to the effective date of the conciliation agreement.**

Answer to Interrogatory No. 4: The education and training provided by the DSCC to comply with section VI(2)(b) of the conciliation agreement has changed from the education and training conducted by the DSCC prior to the conciliation agreement in several respects. In response to Commission interrogatories, on January 23, 1995 the DSCC described its education and training program for its 1994 election cycle tally program as follows:

DSCC informed Democratic candidates of the tally program at various times and in various ways throughout the cycle. Committee staff and



counsel explained the program at 'retreats held separately for incumbent candidates and challengers. The Committee also periodically included discussions of the tally program in group or individual meetings with candidates and their representatives throughout the cycle. Written explanations of the program, such as the one entitled 'The Tally Option' were also made available to candidates and donors. Staff and counsel also addressed questions about tally from candidates, their staffs, and donors as they arose.

Answer to Interrogatory No. 5, Response of the DSCC to the Order of the Federal Election Commission to Submit Written Answers (MUR 3620), dated January 23, 1995.

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Unlike the training in the 1994 election cycle, since the signing of the MUR 3620 conciliation agreement, the DSCC has undertaken a more formal, systematic program of education and training. This has included in-person and telephone conferences with DSCC fundraising and campaign staff specifically about the tally program and the requirements of the MUR 3620 conciliation agreement. Furthermore, in addition to making a revised version of the "tally option" available to candidates and donors, the DSCC distributed to its own fundraising personnel as well as all of its candidate campaigns detailed explanations about the tally program and the requirements of the MUR 3620 conciliation agreement. As a result, DSCC staff and counsel handled a far greater number of inquiries from campaign staff regarding the tally program.

In addition, the content of the training and education changed significantly. Unlike in the prior election cycle, in this cycle tally participants were provided specific education that the tally program does not include earmarking and that the DSCC does not accept earmarked contributions. They were also told that checks that bore an indicia of earmarking would be returned. They were also instructed that campaigns and fundraisers should take steps to ensure that the contributors understood the tally program. The DSCC also instructed its fundraising staff that it had to include the agreed upon disclaimer language in all tally solicitations, and campaigns were strongly encouraged to do the same. Finally, the education and training advised that candidates should, when possible, have the DSCC review tally fundraising solicitations to ensure compliance with the MUR 3620 conciliation agreement.

Interrogatory No. 5. Please provide copies of any documents explaining the tally program or explaining the implementation of the conciliation agreement which have been distributed since September 1, 1995, to the DSCC, Democratic Senate candidates, staff of Democratic Senate candidates, fund-raisers for Democratic Senate candidates, or potential contributors. For each document provide the following information:

- a. State who wrote and edited the document;
- b. State when the document was first distributed;
- c. State how the document was distributed; and
- d. List all recipients of the documents.

Answer to Interrogatory No. 5: Attached at Tabs A, B, C, D and E are documents responsive to this request. The first (Tab A) is a memorandum to DSCC fundraising staff from the Perkins Coie Political Law Group regarding tally program compliance. For purposes of responding to this interrogatory only, and without waiving any privilege, that document was drafted and edited by Robert F. Bauer and Marc E. Elias, attorneys at Perkins Coie. The document was first distributed on or about April 29, 1996. It was distributed by hand delivery. DSCC fundraising staff and other senior management at the DSCC received copies of this document.

The next document (Tab B) is a memorandum to 1996 Democratic Senate candidates from Robert F. Bauer, General Counsel, Democratic Senatorial Campaign Committee, regarding tally program compliance. For purposes of responding to this interrogatory only, and without waiving any privilege, that document was drafted and edited by Robert F. Bauer and Marc E. Elias, attorneys at Perkins Coie. It was first distributed on or about April 29, 1996. It was distributed via facsimile in most instances, and in some instances via first class mail. The recipients of that documents were all 1996 Democratic Senate candidates. It is likely that employees of the DSCC received copies of this memorandum as well.

The third document (Tab C) is entitled "The Tally Option." This document has been rewritten and edited from one election cycle to the next, and thus it is not possible to determine with any certainty who drafted it. For purposes of responding to this interrogatory only, and



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without waiving any privilege, it was edited after the MUR 3620 conciliation agreement by Marc E. Elias of Perkins Coie to comply with the requirements of the agreement. The precise date that this document was first distributed is not certain; however, it is the standard description of the tally program that would have been distributed from the beginning of the election cycle. This document was distributed in a number of ways. In some instances, it was distributed by mail to contributors or campaigns who have questions about the tally program. In other instances, it would have been included with solicitations or other literature about the tally program. The DSCC does not maintain a comprehensive list of the recipients of this document.

The fourth document (Tab D) is a three page fax from Lisa Cowell of the DSCC to Steve Jost and Nancy Kohn regarding talking points for Congressman Durbin for a May 6, 1996 fundrasing event. The document appears to have been written and edited by Lisa Cowell. It appears to have been distributed to the Durbin campaign via facsimile on April 18, 1996. From the facsimile cover sheet it appears that the recipients were employees of and consultants to the Durbin campaign.

The fifth document (Tab E) is a memorandum to all Democratic candidates and interested parties from Robert F. Bauer regarding Republican claims about the tally program. For purposes of responding to this interrogatory only, and without waiving any privilege, this document was drafted and edited by Robert F. Bauer, attorney at Perkins Coie. It was first distributed on or about October 10, 1996. The recipients of this document appear to have been 1996 Democratic Senate candidates. It is likely that employees of the DSCC also received copies of this memorandum as well as other members of the public.

**Interrogatory No. 6. Please describe the procedures the DSCC has implemented since September 1, 1995 to comply with section VI(2)(c) of the conciliation agreement. If the procedures are written, please provide copies of such procedures.**

Answer to Interrogatory No. 6: As required by section VI(2)(c) of the conciliation agreement, the DSCC has the agreed on standardized language in its solicitations pertaining to the tally program. Furthermore, as part of its education and training, the DSCC has encouraged

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candidates to include this language in their solicitations. The two memoranda attached (Tabs A and B) describe procedures to comply with this provision of the conciliation agreement.

**Interrogatory No. 7. Please describe the procedures the DSCC has implemented since September 1, 1995, to review DSCC and Democratic Senate candidate fundraising solicitations pertaining to the tally program in accordance with section VI(2)(d) of the conciliation agreement, and provide the following information:**

- a. If the procedures are written, provide a copy of the procedures;
- b. Identify the individuals who created the procedures and who are responsible for enforcing them;
- c. Describe how these procedures are communicated to DSCC staff and Democratic Senate candidates; and
- d. List all recipients of the procedures.

Answer to Interrogatory No. 7: As with the other requirements of the conciliation agreement, DSCC's legal counsel circulated memoranda to all DSCC fundraising staff and all Democratic Senate fundraising staff that specifically states that "The DSCC should review tally fundraising solicitations, when possible, to make sure they comply with the requirements [of the conciliation agreement]." (Tab A.) The fact that the DSCC has reviewed its own solicitations is evidenced by the inclusion of the standard language in the DSCC's own solicitations. The DSCC has also undertaken reasonable procedures to review campaign tally solicitations to ensure that they, too, abide by the agreement's requirements.

- (a) The two memoranda containing written procedures are attached at Tabs A and B.
- (b) For purposes of responding to this interrogatory only, and without waiving any privilege, these procedures were created by the DSCC's outside legal counsel in consultation with the DSCC senior management. All DSCC management and fundraising staff are responsible for enforcing them in consultation with DSCC's legal counsel.

(c) These procedures were communicated to DSCC staff and Democratic Senate candidates both through formal training described above, written memoranda which have been attached, and through informal telephone consultation.

(d) All DSCC fundraising staff and senior management, as well as all Democratic Senate campaigns, received copies of these procedures.

**Interrogatory No. 8. For each tally solicitation reviewed by the DSCC as part of the procedures referred to in Interrogatory No. 7, please provide the following information:**

- a. Provide a copy of the solicitation both in its original and final versions;
- b. Identify the individual who reviewed the solicitation on behalf of the DSCC;
- c. Provide a copy of all written comments produced by the DSCC reviewer and the author of the solicitation concerning the DSCC's review of the solicitation;
- d. Describe all conversations which took place between the DSCC reviewer and the author of the solicitation, pertaining to the solicitation's conformity with the conciliation agreement requirements; and
- e. State when the solicitation was reviewed by the DSCC.

Answer to Interrogatory No. 8: The DSCC does not routinely maintain non-DSCC tally solicitations. All DSCC solicitations as well as those in the possession of the DSCC from candidate campaigns are attached (Tab F). The DSCC is without sufficient information to answer the remainder of this interrogatory.

**Interrogatory No. 9. Describe each fundraising solicitation pertaining to the tally program produced since September 1, 1995, which was not reviewed by the DSCC as part of the procedures referred to in Interrogatory 7, and state why the solicitation was not reviewed by the DSCC.**

Answer to Interrogatory No. 9: The DSCC is unaware of how many, if any, solicitations pertaining to the tally program since September 1, 1995 were not reviewed by the DSCC as part of the procedures referred to in Interrogatory 7.

**Interrogatory No. 10. Please identify and describe in detail the role of each person who had responsibility, including supervisory responsibility, for approving, implementing, and/or operating the DSCC's tally program since September 1, 1995.**



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Answer to Interrogatory No. 10: This interrogatory is unclear in its scope. However, without waiving this objection, ultimate responsibility for approving, implementing and operating the tally program rested with Paul Johnson, Executive Director of the DSCC, and with the DSCC's other senior management. Also, DSCC Finance and Operations staff were largely responsible for monitoring the DSCC's tally program. Finally, for purposes of responding to this interrogatory only, and without waiving any privilege, DSCC's legal counsel had responsibility for approving and implementing portions of the DSCC's tally program since September 1, 1995.

**Interrogatory No. 11. Please provide copies of all solicitations for tallied contributions produced by the DSCC since September 1, 1995. Please include any response cards or other information enclosed with each solicitation.**

Attached at Tab F.

**Interrogatory No. 12. Please provide copies of all solicitations for tallied contributions produced by the Democratic Senate candidates since September 1, 1995 which are in the possession of the DSCC. Please include any response cards or other information enclosed with each solicitation.**

Attached at Tab F.

I declare under penalty of perjury under the laws of the  
United States of America that the foregoing is true and  
correct.

Executed on December \_\_, 1996.



A handwritten signature in cursive script, appearing to read "Rodu", is written above a horizontal line.

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A

**PERKINS COIE**  
**POLITICAL LAW GROUP**

TO: DSCC Fundraising Staff

FROM: Perkins Coie Political Law Group

RE: Tally Program Compliance

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Last August the DSCC and the FEC entered into a conciliation agreement to settle various complaints against the DSCC's tally program. As a part of that settlement, we exacted significant concessions from the FEC, including an acknowledgment that, properly conducted, the tally program is legal. As for the DSCC, it agreed to implement the following "remedial" steps:

1. Any contributions that is received by the DSCC that appears to be earmarked to a particular candidate must be returned. In past cycles those contributions were deposited and a form letter was sent to the contributor. This no longer is acceptable. Any check that bears the name of a candidate, including a memo line note such as "tally to \_\_\_\_\_" or "for \_\_\_\_\_" must be returned unless it is accompanied by a properly worded letter or response card, signed by the contributor, that indicates that the donor understands the tally program (see number 3 below for acceptable language). The returned check may be accompanied by a proper solicitation for a new contribution.
2. We must tell our candidates and contributors that the DSCC does not accept earmarked contributions and that tallied contributions are spent for DSCC activities and programs as the Committee determines within its sole discretion.

---

For more information:

Robert F. Bauer	(202) 434-1602	Marc E. Elias	(202) 434-1625
Judith L. Corley	(202) 434-1622	Alicia Alexion (Legal Assistant-	(202) 434-1658
B. Holly Schadler	(202) 434-1634	Compliance Specialist)	

24 Hour Pager 1-800-608-3145

- 9 7 0 4 3 8 0 3 7 1 1
3. All tally solicitations by the DSCC, its candidates and agents must include the following language:

The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

This language should be included as its own paragraph or a part of another but it must be included in its entirety.

4. The DSCC should review candidate tally fundraising solicitations, when possible, to make sure they comply with the requirements set forth above. To make this task easier we will be sending a memorandum to all candidates in the next few days informing them about the tally program.

While some of these requirements require effort and attention, the good news is that if we comply with them the tally program can continue to be a valuable DSCC fundraising program. In the future we will be providing further written and oral guidance regarding the tally program to both the DSCC staff and candidates. In the meantime, if you have any questions please do not hesitate to contact one of us.

MEE:mee

B

**PERKINS COIE**  
**POLITICAL LAW GROUP**

TO: 1996 Democratic Senate Candidates

FROM: Robert F. Bauer, General Counsel  
Democratic Senatorial Campaign Committee

RE: Tally Program Compliance

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As you know the "tally program" is one of the DSCC's most important and successful fundraising programs. So that you can fully participate in this program, we provide the following guidance:

1. Tally is not an earmarking program; indeed, the DSCC does not accept earmarked contributions. Therefore, any contributions that is received by the DSCC that appears to be earmarked to a particular candidate will be returned. Any check that bears the name of a candidate, including a memo line note such as "tally to \_\_\_\_\_" or "for \_\_\_\_\_" will be returned unless it is accompanied by a signed and properly worded letter or response card that indicates that the donor understands the tally program (see number 3 below for acceptable language). The returned check may be accompanied by a proper solicitation for a new contribution.
2. Candidates and their fundraising agents should tell contributors solicited for tally contributions that the DSCC does not accept earmarked contributions and that tallied contributions are spent for DSCC activities and programs as the Committee determines within its sole discretion.

---

For more information:

Robert F. Bauer (202) 434-1602  
Judith L. Corley (202) 434-1622  
B. Holly Schadler (202) 434-1634

Marc E. Elias (202) 434-1625  
Alicia Alexion (Legal Assistant- (202) 434-1658  
Compliance Specialist)

24 Hour Pager 1-800-608-3145



3. All written tally solicitations should include the following language:

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This language should be included as its own paragraph or a part of another and should be included in its entirety.

4. Candidates are encouraged, when possible, to have the DSCC review tally fundraising solicitations.

The tally program will continue to be a valuable DSCC fundraising program. In the future we will be providing further written and oral guidance regarding the tally program to you. In the meantime, if you have any questions please do not hesitate to contact the DSCC.

MEE:mee

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## Democratic Senatorial Campaign Committee

430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447

Internet: info@dacc.org

### Democratic Senatorial Campaign Committee THE TALLY OPTION

Robert Kerrey, RE  
Chairman

Program Chairs

West Majority Trust

John Breaux, LA

Senate's Council

Barbara Mikulski, MD

Barbara Boxer, CA

Leadership Circle

Carl Conrad, ND

Advisory Council

Max Baucus, MT

DSCC Roundtable

David Pryor, AR

Carol Muscley-Braun, IL

Kathy Murray, WA

#### WHAT ROLE DOES THE DSCC PLAY?

##### Funding Democratic Senate Nominees

The Democratic Senatorial Campaign Committee is a national party committee formed by the Democratic members of the U.S. Senate to help raise funds to provide campaign services for Democratic U.S. Senate incumbents and candidates throughout the country. The Finance Staff of the DSCC raises funds which are allocated to targeted Democratic Senate races based on factors such as the campaign's need and winability. These funds provide nominees with an extra source of funding apart from what is raised by the individual campaigns. The DSCC raises funds in a variety of ways through its donor programs and through national fundraising activities. PAC and personal funds are accepted by the DSCC. Contributions to the DSCC are not tax deductible under federal law.

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Under FEC regulations, an individual may contribute a maximum of \$2,000 directly to a candidate running for Federal office. (\$1000 in the primary and another \$1000 for the general election). In addition, an individual may contribute up to \$20,000 annually to a political party organization, such as the DSCC, which is part of the overall federal limit of \$25,000 per person per year as set by the Federal Election Commission. PAC's may contribute a maximum of \$15,000 annually to the DSCC. DSCC contributions allow donors to further support Democratic Senate candidates. This important source of funds can make the critical difference between winning and losing in the final days leading up to an election.

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When contributing to the DSCC, a donor may request that his or her contribution be "tallied" to the Democratic Senate candidate(s) of his or her choice. This is a way for a donor to express support for a candidate or candidates and how he or she would like the success in raising the contribution credited.

DSCC funds are allocated to targeted Democratic Senate candidates by the Allocation Committee of the DSCC. This committee sets the DSCC allocation policies at its discretion. In allocating funds to candidates, many factors are considered by the DSCC's Senate Allocation Committee such as need, winability, latest polling figures, finances on hand and the amount of funds tallied to the DSCC for that specific candidate. The DSCC maintains a record (a "Tally") of how much money each candidate helps to raise for the Committee. The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion. The DSCC Tally Groundrules are available to candidates, their representatives and donors on request.

#### HOW DO I JOIN THE DSCC SO I CAN "TALLY"?

The DSCC has many donor categories and levels of participation for PAC's and individuals with corresponding benefits for each donor group. All contributions to the DSCC at any donor level may be tallied to specific candidates by the donor. The DSCC requests that donors notify the DSCC in writing of their tally requests within 30 days of the receipt of their contribution. Tally requests in excess of 30 days cannot be honored.

For additional information, please call the DSCC Finance Division at (202) 224-2447.



D



**Democratic Senatorial Campaign Committee**

430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447

Internet: [info@dscc.org](mailto:info@dscc.org)

J. Robert Kennedy, III  
(Chairman)

Program Chairs

Next Majority Trust  
John Breaux, LA

Women's Council  
Barbara Mikulski, MD  
Barbara Boxer, CA

Leadership Circle  
Kent Conrad, ND

Labor Council  
Russ Feingold, WI

USCC Representatives  
David Pryor, AR  
Joni Hansen-Braun, IL  
Vetty Murray, WA

970433803715

TO: Steve Fort 203-241-0709  
Nancy Kohn 312-832-0468  
FROM: Lisa Cowell  
DATE: 4-18  
PAGES 3 including this cover sheet  
RE: Steve - As promised, talking  
pts for Cong. Durkin re:  
May 6<sup>th</sup> joint event.

*Thanks - Liz*

If you have any questions regarding this transmission, please call Lisa Cowell at: (202) 485-3110.

Talking Points for May 6 fundraiser in Chicago:

- This is a joint event to benefit my campaign and the Democratic Senate Campaign Committee.
- It is being chaired by Mayor Daley. Senators Simon, Moseley-Braun, Senate Democratic Leader Tom Daschle and Bob Kerrey to be in town for this.
- This is a very important event for me. I am in a tough campaign for Paul Simon's seat. I will win if I have the funds to run a competitive race.
- It will take \$9 million to run this campaign -- including \$1 million that I will get from the DSCC provided the committee has the funds necessary to give me the maximum allowed under the law.
- This event will raise money directly for my race, and also for the DSCC. People who attend the event will be able to tally to me.
- It would mean a lot to me if you would support me by joining me, the Mayor, Tom Daschle and the others for a reception and dinner on May 6th.
- We are asking folks to give or raise \$10,000 in order to come for dinner. (If they can't do \$10,000 -- ask them to give or raise \$2000 and come to the reception).
- Can I count on you to send in your check(s) immediately?

Common Questions:

- Why should I give to the DSCC  

This is a critical source of funding for Democratic Senate races and can make the difference between winning and losing in the final days of a tough campaign. For example, last cycle, DSCC funding played a vital role in the victories of Chuck Robb, Dianne Feinstein & Frank Lautenberg.
- I've already given money to your general election. How can I still give?  

My campaign can accept up to \$1,000 from an individual for the general election, and the DSCC can accept you to \$20,000 per calendar year from an individual.

The way this event is structured is, my campaign will accept up to the first \$1,000 of a contribution and the remainder will go to the DSCC and be added to my "tally." (PACs - Durbin and DSCC have a 50/50 split)

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- Can I give corporate or "soft" money?

No, this is all federal money. Also, contributions do count against the overall \$25,000 federal cap.

- What is the DSCC

The DSCC is a committee set up by US Senators to give financial support for Democratic Senate candidates across the country.

- What is the "tally"?

The tally is an internal mechanism with the DSCC. When an individual gives to the DSCC, he or she may express their support for my race by "tallying" their money.

The money raised by the DSCC is spent in competitive races across the country. When determining where they spend their money the DSCC will look at three things (1) winnability (2) candidate need and (3) proven fundraising for the committee -- the tally.

- Is this legal?

Absolutely

- How should I make out my check?

Checks should be made payable to the "Illinois Senate Victory Fund" and mailed to:

DSCC  
430 S. Capitol St, SE  
Washington, DC 20003



E

PERKINS COIE

October 10, 1996

TO: All Democratic Candidates and Interested Parties  
FROM: Robert F. Bauer  
RE: Republican Claims about the "Tally" Program

---

In the last days, the National Republican Senatorial Committee has again resurrected its years-old claims about the "tally" program and how it works. And, as in the past, those claims are false and require the usual effort at correction.

What is the "tally system"?

The system was devised in the early 1980's as a means of encouraging candidates to take an active role within the party in raising party money. By that time, the parties had suffered a loss of influence of the process, losing prime position to candidates who raised money effectively on their own and committed the monies they raised to their own individual election campaigns. With "tally" and other measures, the DSCC put in place a system for encouraging and monitoring candidate fundraising support for the party as a whole.

The system provides simply that candidate fundraising for the party will be considered along with other factors when the Committee determines the funding to be allocated to particular races. Other factors include whether a candidate has adequate resources without party support, and whether the race is competitive and the candidate will need more support than what he or she can raise alone.

Put simply, tally was intended to focus candidates on the importance of support for the party as a whole, not only for their own campaigns.

Is tally "earmarking"?

Tally is not at all the same as, much less remotely like, earmarking. And the Federal Election Commission, after a thorough review, reached the same conclusion. This is what the FEC concluded:

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Consistent with its stated policy and practice of not accepting earmarked contributions, the DSCC did not treat such tallied contributions as being earmarked for the designated candidate.

The claim that tally is earmarking is a misunderstanding of both the law and nature of the tally program. Under the federal law, an earmarking arrangement is made with a donor, and it controls the way the donor's contribution is used. Tally, of course, involves no such understanding with the contributors about particular contributions. The DSCC considers the amounts tallied to a particular candidate as a whole, in assessing the overall commitment and success of the candidate in raising funds for the party. And the DSCC expressly states that it does not accept earmarked contributions from any donor.

Which explains how the claim about earmarking makes absolutely no sense in the light of tally's purpose. As noted, the very purpose of the program is to encourage candidates to raise monies the party may use as required for all its candidates -- to invest those funds where they will produce the most number of electoral successes. An earmarking arrangement would completely destroy this objective, by allowing donors and their candidates to direct the funds back to those candidates -- regardless of candidate need and the other requirements of the party.

So who decides who receives the tally money, and where it goes?

The Committee allocates the money where it will best promote party objectives and enhance the prospect of the most number of victories. As a result, as the Committee has demonstrated to the FEC and on other occasions, candidates who raise a great deal of money for the committee often receive very little, because it is needed not by them, but by others. And candidates with a poor tally record will often receive generous support because they stand a chance to win a seat but not without party support.

How has the use of tally been demonstrated?

Tally has been independently studied by Professor William T. Bianco, a trained political scientist at a major university with expertise in parties. His review, also made available to the FEC, concludes upon review of all the tally and contribution data from the 1992 and 1994 cycles:

... not only do tally receipts vary with political circumstances, they show no signs of tracking contribution limits . . . . In short, there is no evidence of recycling [*i.e.*, earmarking], and much



evidence of electioneering [i.e., allocating funds to obtain the maximum number of victories].

DSCC's allocation of funds collected through the tally program appears to reflect a political strategy, one directed at preserving the party's incumbents running for reelection and electing as many of the party's challengers to office.

Why did the DSCC pay a "fine" to the FEC in the tally case?

DSCC did not pay a fine on any earmarking claim or allegation. Those claims were flatly dismissed as without merit. The fine was paid to resolve the concern in the case with the clarity with which DSCC had explained the program to its candidates. In the words of the Agreement with the FEC, certain of the tally solicitations

could have been clarified . . . to assure that its staff and the candidate committees had a better understanding of the tally program and communicated this understanding more effectively to donors when soliciting for the DSCC's tally program.

Is the problem with tally that it "looks bad"?

There is no reason why tally should look "bad". To the contrary, the commitment the party seeks from candidates in tally is precisely the type of commitment candidates should be encouraged to make to their party, in the interests of the party and all of its candidates.

When the current campaign finance reforms were enacted, in the 1970's, an attempt was made to provide for strong parties -- by allowing them to accept larger contributions and made more substantial expenditures for candidates than permitted to any other kinds of political committee. This legal authority is meaningless without a commitment by candidates to support the parties and not simply their own reelection efforts. Tally is one measure undertaken with great success to bind candidates closer to the party and to success of the party as a whole. In this way tally serves the public's interest in strong parties and is completely in step with the goals, letter and spirit of our campaign finance laws.

RFB:rft

The Honorable Ed Rendell  
Mayor, Philadelphia

Len Barrack  
Bill Batoff

Alan Kessler  
Tom Leonard

and Bill Titelman

request the pleasure of your company  
at a reception to support the

Democratic Senatorial Campaign Committee  
and the  
Democratic Congressional Campaign Committee

with Special Guests

Senator Bob Kerrey  
Chairman, Democratic Senatorial Campaign Committee

Congressman Dick Gephardt  
House Democratic Leader

Congressman Bob Torricelli  
U.S. Senate Candidate, New Jersey

Monday, September 9  
TBD

at TBD

RSVP card enclosed or call  
Ileana Futter (202) 224-2447

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YES, I would like to support the Philadelphia Victory Fund!

☐ I/We will attend the reception and contribute \$\_\_\_\_\_.

☐ No, I/we cannot attend, but enclosed is my contribution of \$\_\_\_\_\_.

This is a joint fundraising event for the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee. Please make checks payable to the "Philadelphia Victory Fund." Payment prior to the event is required. Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year.

Name\_\_\_\_\_

Resident Address\_\_\_\_\_City/State/Zip\_\_\_\_\_

Res. Tel. ( ) \_\_\_\_\_Bus. Tel. ( ) \_\_\_\_\_

Self Employed \_\_\_\_\_Title or Position\_\_\_\_\_

Bus. Address\_\_\_\_\_City/State/Zip\_\_\_\_\_

My contribution should be allocated according to the allocation stated on the reverse:

Signature:\_\_\_\_\_

Paid for by the Philadelphia Victory Fund.

Contributions to this committee are not deductible for federal income tax purposes.

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## PHILADELPHIA VICTORY FUND

Paid for and authorized by the Philadelphia Victory Fund ("PVF"), a joint fundraising committee authorized by the Democratic Senatorial Campaign Committee ("DSCC") and the Democratic Congressional Campaign Committee ("DCCC").

Federal and non-federal contributions to the PVF will be allocated 50 percent to the DSCC and 50 percent to the DCCC. All federal contributions to the DSCC will be "tallied" 50% to Senator Joe Biden and 50% to Congressman Bob Torricelli unless otherwise stated in writing to the DSCC.

Notwithstanding the allocation formula, any contributor may designate his or her contribution for a particular participant. The allocation formula above may change if any contributor makes a contribution, that when allocated, would exceed the amount he or she may lawfully give to any participant.

The DSCC does not accept contributions earmarked for a particular candidate. The DSCC maintains a record (a "Tally") of how much money each candidate helps to raise for the Committee. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

The DSCC and DCCC are national party committees formed to help raise funds to provide campaign services for Democratic U.S. Senate and House incumbents and candidates throughout the country. The DSCC and DCCC can accept donations from individuals up to \$20,000 per calendar year (not to exceed the total \$25,000 yearly federal limit for an individual) and from PACs up to \$15,000 per calendar year.

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HARVEY  
**GANTT**  
FOR U.S. SENATE '96

As the chair of the Democratic Senatorial Campaign Committee, I wanted to take this opportunity to thank you for your continuing support of Harvey Gantt. Your generosity has enabled Harvey to assemble a top-flight campaign team and a strong grassroots organization.

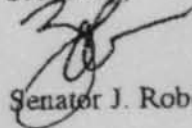
The Democratic party has the opportunity to defeat several Republican incumbents in 1996. Harvey's base -- of which you are an integral part -- and his unique vision of leadership make him one of the most viable challengers in the country. That is why I am educating Democratic donors all over the country about Harvey's campaign. I am telling people who are serious about bringing change to Washington to support Harvey to the best of their abilities. Harvey's 1996 campaign against Jesse Helms is our best opportunity yet to rid Washington of Jesse Helms' divisive and radical agenda.

You already know about Harvey's lifetime of accomplishments and have made a significant commitment to the campaign. Federal election law permits you to contribute \$2,000 payable to Gantt for Senate (\$1,000 to retire Harvey's primary debt and \$1,000 for the general election). Please give Harvey the maximum contribution at this time. Harvey wants to reach his \$1 million goal by June 30th. To do so, he needs the continued support of his most tireless supporters.

If you have already contributed \$2,000 to the campaign, I urge you to make a \$2,500 contribution to Harvey's tally with the Democratic Senatorial Campaign Committee (DSCC). The DSCC is allowed to spend up to \$684,000 on behalf of Gantt for Senate. I have enclosed a tally form for your convenience. Please make your check payable to the DSCC and return the form with your check in the enclosed remittance envelope. Your contribution to the DSCC will place you among an exclusive group of Gantt supporters that could very well make the difference in this tight election.

Again, I want to thank you for your selfless support of Harvey. On very few occasions do we have the opportunity to elect someone with the vision and credentials of Harvey Gantt. Together we can elect Harvey Gantt to the United States Senate and send Jesse Helms home.

Sincerely,



Senator J. Robert Kerrey



**DSCC SAMPLE "TALLY" LETTER**

All letters indicating the desire on the part of a donor to "tally" must be sent by the donor on donor letterhead to be forwarded to the Democratic Senatorial Campaign Committee (DSCC). Please note that checks with tally notations written directly on the check cannot be accepted.

Please mail the following letter and check made payable to the DSCC in the enclosed envelope.

**SAMPLE Tally Letter**

TO: DSCC  
Finance Director  
430 South Capitol Street, SE  
Washington, DC 20003

Dear DSCC:

I understand the DSCC "tally" program as it has been explained to me. Please tally \$\_\_\_\_\_ of my DSCC contribution to the name of Harvey Gantt.

Sincerely,

Donor Name

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## Democratic Senatorial Campaign Committee

430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447

Internet: info@dsc.org

### Democratic Senatorial Campaign Committee THE TALLY OPTION

Robert Kerrey, NE  
Chairman

Patricia O'Brien

Herb Hirschman

John Breaux, LA

Barbara Boxer

John Mikulski, MD

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Leadership Circle

Tom Conrad, ND

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David Pryor, AR

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Patty Murray, WA

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**U.S. Senator Bob Kerrey**  
Chairman, Democratic Senatorial Campaign Committee

invites you to meet with

**Sen. Barbara Boxer**  
**Sen. John Breaux**  
**Sen. Kent Conrad**  
**Sen. Byron Dorgan**

**Sen. Dianne Feinstein**  
**Sen. Bob Graham**  
**Sen. Fritz Hollings**  
**Sen. Frank Lautenberg**

to benefit  
**1996 Democratic Candidates for the U.S. Senate**

on Sunday, July 14, 1996 from 4:30 - 6:00 pm

**Barbaralee Diamonstein and Carl Spielvogel**

at  
"Bonnie Dune" on Gin Lane  
Southampton

\$5,000 per couple

Casual Dress

*Please respond by enclosed card or call Susan Torricelli at (202)862-8551*

*Authorized and paid for by the Democratic Senatorial Campaign Committee  
Contributions are not tax deductible  
\*union bug\**

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**Yes! I would like to help the Democratic Senatorial Campaign  
Committee elect Democrats to the United States Senate in 1996.**

- ☐ YES, I/we will contribute or raise \$5,000 and attend the reception.  
☐ I/we will be unable to attend the reception, but enclosed is  
my contribution of \_\_\_\_\_.  
☐ I/we will be unable to attend the reception.

Federal law requires political committees to report the name, mailing address, occupation  
and employer for each individual whose contributions aggregate in excess of \$200 in a  
calendar year.

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Phone \_\_\_\_\_ Business Phone \_\_\_\_\_  
Title or Position \_\_\_\_\_ Self-Employed \_\_\_\_\_  
Employer \_\_\_\_\_

**Please make checks payable to:**

Democratic Senatorial Campaign Committee, and return in the enclosed envelope to:  
430 South Capitol Street, S.E., Washington, D.C. 20003

*Authorized and paid for by the Democratic Senatorial Campaign Committee  
Contributions are not tax deductible*

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**\*union bug\***

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- The Democratic Senatorial Campaign Committee (DSCC) is a national party committee formed by the Democratic members of the U.S. Senate to help raise funds to provide campaign services for Democratic U.S. Senate incumbents and candidates throughout the country.
- Under federal law, the DSCC may contribute up to \$17,500 per election cycle to candidates for the U.S. Senate. In addition, the DSCC may make expenditures in connection with the general election campaigns of Democratic nominees for the U.S. Senate. The amount the DSCC may spend on behalf of a nominee is based on the voting age population of that nominee's home state. The DSCC raises funds in a variety of ways - through DSCC donor programs, the Next Majority Trust, Leadership Circle, DSCC Roundtable and Women's Council; and through special events and national fundraising activities.
- The DSCC can accept donations from individuals up to \$20,000 per calendar year (not to exceed the total \$25,000 yearly federal limit for an individual) and from PAC's up to \$15,000 per calendar year.
- The DSCC maintains a record (a "Tally") of how much money each candidate helps raise for the Committee. The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.
- Paid for and authorized by the Democratic Senatorial Campaign Committee, Donald J. Foley, Treasurer. Contributions are not tax deductible.

A SALUTE TO SENATOR FILL



WELCOME TO JACK REED

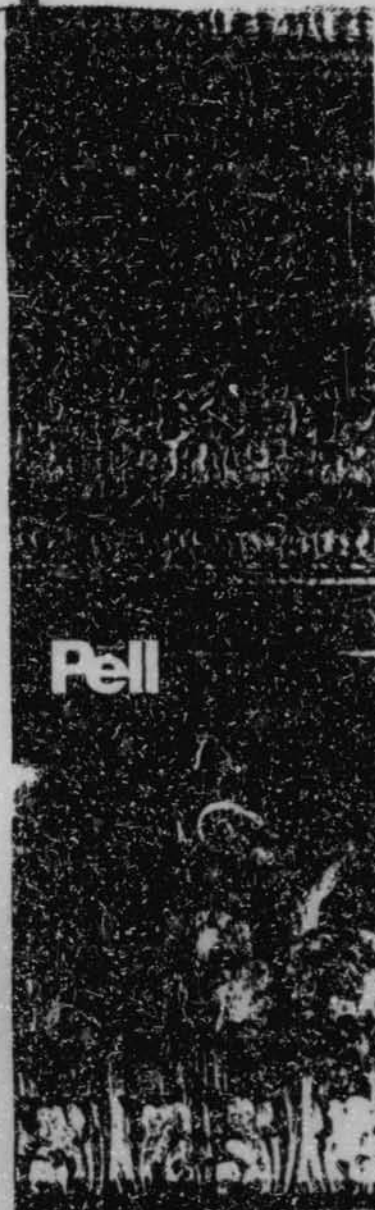
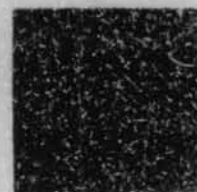
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*TH*

Dionne Davies  
Robert Fitch  
George Gould  
Sonny Hall  
Jim and Warrie Price  
Paul Quinn  
Thomas H. Quinn  
Bob and Marcia Riesman  
Mark Weiner

*Committee in Formation*



SENATE DEMOCRATIC LEADER  
Senator Tom Daschle

DEMOCRATIC SENATORIAL  
CAMPAIGN COMMITTEE CHAIRMAN  
Senator Bob Kerrey

*and*

US SENATE CANDIDATE  
Congressman Jack Reed

*invite you to join them at a reception  
saluting the distinguished career of retiring*

Senator Claiborne Pell

*to benefit the*

Democratic Senatorial Campaign Committee's  
efforts to elect a new Democratic Majority  
and Congressman Jack Reed as the next  
Democratic Senator from Rhode Island

*at the home of Thomas H. Quinn  
1217 20th Street, NW  
Washington, DC*

*(Reservations Open 11/1/93)  
1993*

*Minimum Contribution: \$1,000*

*Please RSVP by enclosed card or call  
Class Long at (202) 981-6000 or  
Liz Nelson (202) 485-1105*

*Event for the Democratic Senatorial Campaign Committee*





THE HONORABLE JIMMY CARTER

THE HONORABLE SAM NUNN

and

THE HONORABLE ZELL MILLER

Cordially invite you to attend a dinner honoring

MAX CLELAND

in his bid for the United States Senate

On Monday, September 30, 1996

at the JW Marriott Hotel  
3300 Lenox Road, N.E.  
Atlanta, Georgia

7:00 - 9:00 p.m.  
Business Attire

\$1,000 per person dinner  
\$10,000 host committee

Please RSVP by enclosed card or call Tommy Thompson at (770)458-2662

Paid for by the Democratic Senatorial Campaign Committee.  
Contributions are not tax deductible

The Democratic Senatorial Campaign Committee (DSCC) is a national party committee formed by the Democratic members of the U.S. Senate to help raise funds to provide campaign services for Democratic U.S. Senate incumbents and candidates throughout the country.

The DSCC can accept donations from individuals up to \$20,000 per calendar year (not to exceed the total \$25,000 yearly federal limit for an individual) and from PACs up to \$15,000 per calendar year.

The DSCC does not accept contributions earmarked for a particular candidate. The DSCC maintains a record (a "Tally") of how much money each candidate helps to raise for the Committee. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

#### Allocation Formula for Funds

The allocation for funds raised under this Agreement shall be as follows:

Contributors shall be advised and the proceeds shall be allocated as follows:

The first \$1,000 of each contribution from an individual and the first \$5,000 of any contribution from a qualified multicandidate committee PAC will be allocated to Friends of Max Cleland Campaign Committee and designated for the general election. Any portion of any contribution in excess of these amounts or that would cause a contributor to exceed applicable contribution limits to Friends of Max Cleland Campaign Committee will be allocated to the DSCC.

All other contributions to the extent they are allowed under Georgia law, such as individual contribution in excess of federal limits, will be allocated to the DSCC.

9 7 0 4 3 8 0 3 7 3 3

Yes! I Would Like To Support the  
Georgia Victory Fund  
And Help Elect Max Cleland To The U.S. Senate!

- ☐ I will serve on the Host Committee, be a table buyer (10 seats) and attend the special reception (\$10,000).  
☐ I will attend the dinner (\$1,000).

For additional details, please call Tommy Thompson at (770)458-2002.

Please make checks payable to "Georgia Victory Fund."  
Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year.

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Phone \_\_\_\_\_ Bus. Phone \_\_\_\_\_  
Self Employed \_\_\_\_\_ Title or Position \_\_\_\_\_  
Employer (or Firm) \_\_\_\_\_

*Paid for by the Democratic Senatorial Campaign Committee.  
Contributions to this committee are not deductible for federal income tax purposes.  
Please see source for more details.*

97043803734





## Democratic Senatorial Campaign Committee

430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447

Internet: info@dscc.org

December 21, 1995

### 1. Robert Kerrey, NE

Chairman

1~

2~

### Program Chairs

Dear 4~:

### Next Majority Trust

John Breaux, LA

I would like to join Governor Roy Romer and Colorado Democratic Chair Michael Beatty in inviting you to an important event that will help your Colorado Senate nominee and Democratic Senate Candidates around the country.

### Women's Council

Barbara Mikulski, MD

Barbara Boxer, CA

January 12-15, 1996, I will be joined by many of my Senate colleagues for our Majority Trust weekend in Aspen. I would like you to join us for all or part of our stay. Senators **Howell Heflin, Joe Biden, Tom Harkin** and **Byron Dorgan** have agreed to join us, with many others not yet confirmed.

### Leadership Circle

Kent Conrad, ND

### Labor Council

Russ Feingold, WI

We will be having a special reception and dinner on Friday, January 12, at the home of Ann and Bob Utley, Chairman of First Southwest Company. We also have other events planned for the rest of the weekend, and I hope you will review the enclosed schedule. For Coloradans only, the ticket price for the Friday night dinner is \$1000 and \$5000 if you would like to attend all of our weekend activities. These funds will be credited toward the Colorado "tally".

### DSCC Roundtable

David Pryor, AR

Carol Moseley-Braun, IL

Patty Murray, WA

The Democratic Senatorial Campaign Committee is an official party organization with the mission of electing Democrats to serve in the U.S. Senate. The DSCC provides strategic, political and financial resources to Democratic candidates and arms them with the tools necessary to run competitive and successful campaigns. We are committed to winning and encourage you to join our efforts.

The DSCC is allowed to allocate \$325,000 to the Colorado Senate race. The money that we raise in January will help enable us to fund our Colorado nominee as well as our other races around the country.

I truly hope that you will join us. This event is an important part of our goal of electing a Democrat in Colorado. I look forward to seeing you in Aspen. If you have any questions, please call Liz Silva at the DSCC 202-485-3136.

Sincerely,

Bob Kerrey

Enclosure

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# Democratic Senatorial Campaign Committee

430 South Capitol Street, S.E., Washington, D.C. 20003 • (202) 224-2447

Internet: info@dsc.org

## FAX COVER SHEET

Please Deliver As Soon As Possible

Date: \_\_\_\_\_ Time: \_\_\_\_\_

To: Laurie Borders

From: LISA COWELL

Send to FAX #: 312-832-0468

COMMENTS: Caught a typo. looks ok. If

you want to add the "tally" option - you

must also include the language attached -

(see \*) in place noted. They must write in a

name Unsuccessfully DD!!) and sign. Can do this in

lieu of a tally letter. If you do this, please fax to me so I

Number of Pages to Follow: 4 *Can show my lawyer, too.*

DSCC Telephone: (202) 224-2447  
Lisa Cowell's Direct Line: (202) 485-3110 *thanks*  
DSCC FAX: (202) 485-3120

97043803736

①

**Durbin  
Contribution Form**

**Contribution List & Edition Number**

**Contribution**

\$500	#
\$500	#
\$1,500	#
\$2,500	#
\$1,000	#
\$1,000	#
\$1,000	#

**Contribution**

\$2,500	#
\$1,000	#
\$1,000	#
\$1,000	#
\$500	#
\$750	#

Total Contribution: \_\_\_\_\_

**Payment**

Check

Please make checks payable to the Illinois Senate Victory Fund.

Visa & Mastercard Payment

Name (as appears on Credit Card): \_\_\_\_\_

Card #: \_\_\_\_\_ Exp Date \_\_\_\_\_

Expiration Date: \_\_\_\_\_

**Shipping and Handling Charges**

Please make shipping checks payable to

**Shipping:**

\$20 - Wegman & Holzer prints only  
\$50 - 5 or less prints  
\$75 - more than 6 prints  
\$125 - set

☞ This is a joint ....

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Occupation: \_\_\_\_\_ Employer: \_\_\_\_\_

☞ Please tally

My contribution should be designated according to the allocation formula stated on the reverse.

Signature: \_\_\_\_\_

97043803737



**Durbin***Take off  
Durbin letterhead  
& use plain*

## Illinois Senate Victory Fund

Illinois Senate Victory Fund is a joint fundraising committee authorized by Friends of Dick Durbin and the Democratic Senatorial Campaign Committee (DSCC).

The first \$1000 of each federal contribution from an individual and up to the first \$5000 of a contribution from a qualified multi-candidate committee PAC will be allocated to Friends of Dick Durbin and designated for the general election. Any portion of any contribution in excess of these amounts or that would cause a contributor to exceed applicable contribution limits to Friends of Dick Durbin will be allocated to the DSCC.

Notwithstanding the allocation formula, any contributor may designate his or her contribution for a particular participant. The allocation formula above may change if any contributor makes a contribution that, when allocated, would exceed the amount he or she can lawfully give to any participants.

The DSCC is a national party committee, formed by the Democratic United States Senators to help raise funds for the Democratic U.S. Senate candidates throughout the country. It can accept donations from individuals of up to \$20,000 per calendar year (not to exceed the total \$25,000 yearly federal limit) and from PAC's up to \$15,000 per calendar year.

*PH → \**  
The DSCC is authorized to allocate \$1.1 million in Illinois to support the ~~Durbin for Senate Campaign~~. *Illinois Senate race.*

For more information please contact Nancy Kohn, Chicago Finance Director, Friends of Dick Durbin, (312) 832-9600.

Paid for by

*Illinois*~~Friends of Dick Durbin~~

500 N. Dearborn, Suite 500 • Chicago, IL 60610

P.O. Box 1049 • Springfield, IL 62702

97043803738

97043803739

Front

# ARTS DURBIN

☐ I will attend the October 12, 1996 Fundraiser

☐ Enclosed is my contribution:

☐ \$100 Individual Ticket

☐ \$500 Patron

☐ \$1,000 Sponsor

☐ I cannot attend, but want to help Dick Durbin.  
Enclosed is my contribution of \$\_\_\_\_\_

This is a joint fundraising event for Friends of Dick Durbin and the Democratic Senatorial Campaign Committee. Please make checks payable to "Illinois Senate Victory Fund."

Federal law requires political committees to report the name, mailing address, occupation and home of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year.

NAME \_\_\_\_\_

RESIDENCE ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

PHONE \_\_\_\_\_ BUSINESS PHONE \_\_\_\_\_

TITLE OR POSITION \_\_\_\_\_ ☐ SELF EMPLOYED

EMPLOYER (OR FIRM) \_\_\_\_\_

BUSINESS ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

My contribution should be designated according to the allocation formula stated on the reverse.

SIGNATURE \_\_\_\_\_

Post to: Illinois Senate Victory Fund, c/o Friends of Dick Durbin, 330 W. Monroe Street, Chicago, IL 60601. Tel: 312-832-9100. Fax: 312-832-4488.  
Contributions to this committee are not deductible for federal income tax purposes. Employer contributions cannot be accepted.

Back

## ILLINOIS SENATE VICTORY FUND

Illinois Senate Victory Fund is a joint fundraising committee authorized by Friends of Dick Durbin and the Democratic Senatorial Campaign Committee (DSCC).

The first \$1000 of each federal contribution from an individual and up to the first \$5000 of a contribution from a qualified multi-candidate committee PAC will be allocated to Friends of Dick Durbin and designated for the general election. Any portion of any contribution in excess of these amounts or that would cause a contributor to exceed applicable contribution limits to Friends of Dick Durbin will be allocated to the DSCC.

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For more information please contact Nancy Kohn, Chicago Finance Director, Friends of Dick Durbin, (312) 832-9600.

© 1996 Friends of Dick Durbin. All rights reserved.



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The DSCC does not accept contributions earmarked for a particular candidate. The DSCC maintains a record (a "Tally") of how much money each candidate helps to raise for the Committee. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.

- ☐ Yes, I/We will attend. Enclosed is my contribution of \$ \_\_\_\_\_
- ☐ I/We are unable to attend, but would like to help elect Democrats to the Senate.  
Enclosed is my contribution of \$ \_\_\_\_\_
- ☐ I/We would like to tally my contribution to \_\_\_\_\_  
(See Reverse for Details)

Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year.

Name \_\_\_\_\_ Phone \_\_\_\_\_  
Home Address \_\_\_\_\_  
City and State \_\_\_\_\_ Zip \_\_\_\_\_  
Title or Position \_\_\_\_\_ Self-Employed ☐  
Employer or Firm \_\_\_\_\_ Phone \_\_\_\_\_  
Business Address \_\_\_\_\_  
City and State \_\_\_\_\_ Zip \_\_\_\_\_

**Make checks payable to:**

Democratic Senatorial Campaign Committee, and return in the enclosed envelope to:  
430 South Capitol Street, S.E., Washington, D.C. 20003

Authorized and paid for by the Democratic Senatorial Campaign Committee.  
Contributions are not tax deductible on federal returns.

97043803740

Please print

Senator Wendell Ford

Senator Jim Dixon

Senator Daniel Inouye

Senator Bennett Johnston

Senator Frank Lautenberg

at a breakfast to benefit the

## Democratic Senatorial Campaign Committee

Wednesday, July 31, 1996 at 8:00 am

at the

Hyatt Regency Washington

400 New Jersey Avenue, NW

Washington, DC

Capitol View Club

Host Committee: \$5,000

(includes Roundtable membership and DSCC Convention package)

Breakfast only: \$1,000

For more information, please call Amy Edwards at (202)485-3111.

Paid for by the Democratic Senatorial Campaign Committee.  
Contributions to the DSCC are not tax deductible.

- ☐ Yes, I/We will attend. Enclosed is my contribution of \$ \_\_\_\_\_
- ☐ I/We are unable to attend, but would like to help elect Democrats to the Senate.  
Enclosed is my contribution of \$ \_\_\_\_\_
- ☐ I/We would like to tally my contribution to \_\_\_\_\_  
(See Reverse for Details)

Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year.

Name \_\_\_\_\_ Phone \_\_\_\_\_  
Home Address \_\_\_\_\_  
City and State \_\_\_\_\_ Zip \_\_\_\_\_  
Title or Position \_\_\_\_\_ Self-Employed ☐  
Employer or Firm: \_\_\_\_\_ Phone \_\_\_\_\_  
Business Address \_\_\_\_\_  
City and State \_\_\_\_\_ Zip \_\_\_\_\_

### Make checks payable to:

Democratic Senatorial Campaign Committee, and return in the enclosed envelope to:  
430 South Capitol Street, S.E., Washington, D.C. 20003

Contributions to the DSCC are not tax deductible.  
Authorized and paid for by the Democratic Senatorial Campaign Committee.



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The DSCC maintains a record (a "Tally") of how much money each candidate helps to raise for the Committee. The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.



Democratic Senatorial Campaign Committee  
430 South Capitol Street, S.E.  
Washington, D.C. 20003



## MEMBER INFORMATION

- ★ The Democratic Senatorial Campaign Committee (DSCC) is a national party committee formed by the Democratic members of the U.S. Senate to help raise funds to provide campaign services for Democratic U.S. Senate incumbents and candidates throughout the country.
  - ★ Under federal law, the DSCC may contribute up to \$17,500 per election cycle to candidates for the U.S. Senate. In addition, the DSCC may make expenditures in connection with the general election campaigns of Democratic nominees for the U.S. Senate. The amount the DSCC may spend on behalf of a nominee is based on the voting age population of that nominee's home state. The DSCC raises funds in a variety of ways — through DSCC donor programs, the Next Majority Trust, Leadership Circle, DSCC Roundtable and Women's Council; and through special events and national fundraising activities.
  - ★ The DSCC can accept donations from individuals up to \$20,000 per calendar year (not to exceed the total \$25,000 yearly federal limit for an individual) and from PACs up to \$15,000 per calendar year.
  - ★ The DSCC maintains a record (a "Tally") of how much money each candidate helps raise for the Committee. The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion.
  - ★ Paid for and authorized by the Democratic Senatorial Campaign Committee. Donald J. Foley, Treasurer.
- Contributions are not tax deductible.



### PAC Contribution

FEC ID# \_\_\_\_\_ Amount \$ \_\_\_\_\_  
Name of PAC \_\_\_\_\_ Tel: \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Washington Representative of the PAC and/or Sponsoring Group \_\_\_\_\_  
Person(s) attending the dinner \_\_\_\_\_  
Treasurer of PAC \_\_\_\_\_  
Check signed by \_\_\_\_\_  
Tally to Senator \_\_\_\_\_  
Contributions through the efforts of \_\_\_\_\_  
Tickets under the name of \_\_\_\_\_ Reserve \_\_\_\_\_

*Contributions are not tax deductible.*

*Paid for and authorized by the Democratic Senatorial Campaign Committee, Donald J. Foley, Treasurer,  
430 South Capitol Street, SE, Washington, DC 20003 (202) 224-2447*

*Please join*

SENATOR ROBERT C. BYRD

*Honorary Chairman*

SENATOR J. ROBERT KERREY

*Chairman, Democratic Senatorial Campaign Committee*

*and the*

*Democratic Members of the United States Senate*

*for*

THE 1995 ANNUAL SENATE DINNER

*to benefit the*

*Democratic Senatorial Campaign Committee*

*Wednesday, November 1, 1995*

*The Sheraton Washington  
2600 Woodley Road, NW  
Washington, DC*

*Reception 6:00 p.m.  
Dinner 7:30 p.m.*

BUSINESS ATTIRE \* REPLY CARD ENCLOSED \* PLEASE R.S.V.P. TO LISA COWELL (202) 485-3117



### Individual Contribution

I will attend the 1995 Annual Senate Dinner (\$1,500 Person Contribution). Amr. \$ \_\_\_\_\_  
I am unable to attend, but enclosed is my contribution of \$ \_\_\_\_\_

Please make checks payable to the Democratic Senatorial Campaign Committee. If you prefer to pay by credit card, please complete the following information:

☐ VISA ☐ MASTERCARD

Number \_\_\_\_\_

Exp. Date \_\_\_\_\_

Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year.

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

Phone \_\_\_\_\_

Business Phone \_\_\_\_\_

Title or Position \_\_\_\_\_

☐ Self-Employed

Employer (or firm) \_\_\_\_\_

Business Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

Please rally my contribution to: \_\_\_\_\_

Contribution through the efforts of \_\_\_\_\_

Reserve \_\_\_\_\_ tickets under the name \_\_\_\_\_

For seating purposes, contributions should be received no later than October 26, 1995. Payment prior to the Dinner is required. Contributions are not tax deductible.



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Via Facsimile

January 14, 1997

Mark Elias, Esq.  
Perkins Coie  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2011

Re: MUR 3620  
Democratic Senatorial Campaign  
Committee and Paul Johnson, as treasurer

Dear Mr. Elias:

In the DSCC's response to the Commission's interrogatories, you make the statement that the DSCC's "education and training took place over an extended period of time, beginning in September 1995 and continuing until the present." Response to interrogatory 3(b). To clarify this response, please list and describe in detail the DSCC's education and training actions which took place in 1995 to implement the remedial provisions of the 1995 conciliation agreement. Please provide separate responses for each month from September through December of 1995.

Please respond to this question by the close of business on January 21, 1997. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Stephan O. Kline  
Attorney

97043803746





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Via Facsimile

January 14, 1997

Mark Elias, Esq.  
Perkins Coie  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2011

Re: MUR 3620  
Democratic Senatorial Campaign  
Committee and Paul Johnson, as treasurer

Dear Mr. Elias:

Based on our conversation earlier today in which you requested a three day extension of time to respond to the Office of General Counsel's question in the captioned matter, this Office has granted the extension. Accordingly, your response is due by the close of business on January 24, 1997.

Sincerely,

A handwritten signature in dark ink, appearing to read "Stephan O. Kline", is written over a horizontal line.

Stephan O. Kline  
Attorney

97043803747

# PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
607 FOURTEENTH STREET, N.W. WASHINGTON, D.C. 20005-2011  
TELEPHONE: 202 628-6600 · FACSIMILE: 202 434-1690

ROBERT F. BAUER  
(202) 434-1602

January 24, 1997

Stephan O. Kline, Esq.  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

MUR 3620

Re: Response to your January 14, 1997 letter

JAN 27 12 43 PM '97

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

Dear Mr. Kline:

In your recent letter you ask the DSCC to clarify its prior statements regarding its program of education and training for the tally program. Specifically, you ask it to "list and describe in detail the DSCC's education and training actions which took place in 1995 to implement the remedial provisions of the 1995 conciliation agreement."

As noted in DSCC's original response, two years after the fact it is impossible to identify with precision each act of education and training conducted on a given day or in a given month and indeed the conciliation agreement does not require that such records be maintained. To the extent that there are any such records they principally involve documents squarely protected by the attorney client privilege.

Without waiving any privilege, the DSCC offers the following response to your most recent interrogatory:

In August 1995 the DSCC began the process of educating an training its staff regarding the requirements of the conciliation agreement. Specifically, in August 1995 DSCC counsel met with DSCC's Executive Director to educate him regarding the requirements of the new conciliation agreement. This meeting also included some discussion of how to implement the other terms of the conciliation agreements (disclaimer, etc.) Counsel also briefed other DSCC staff and candidates regarding the requirements of the new agreement.

In September 1995 the DSCC continued its efforts to develop systems to implement the tally conciliation agreement. Initially this included educating DSCC's senior staff, including its executive director and fundraising director, about the conciliation agreement. It also included formulating new policies and procedures for

[04903-0001/DA970220.006]

January 24, 1997  
Page 2

operating the tally program. DSCC's counsel offered guidance and education on an individual basis via telephone and in person to DSCC administrative and fundraising personnel. By October, DSCC documents explaining the tally program were revised to include the new disclaimer language.

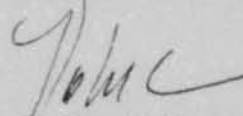
In October 1995 DSCC senior staff completed the review and final implementation of new policies to be disseminated to the general staff. These policies included the full incorporation of requirements of the tally agreement.

In November 1995 DSCC's counsel held a formal in-person training seminar for the entire DSCC fundraising (and some members of the political) staff. Individual education continued on an individual question by question approach as well.

In December 1995 education continued through DSCC counsel answering questions and giving guidance to DSCC staff regarding the new agreement.

It is noted that all of this activity took place notwithstanding the fact that September through December 1995 were not active from a fundraising standpoint. Tally money is raised by campaigns, and there were few organized Senate campaigns raising money for the DSCC at that point in the cycle. The DSCC also conducted its intensive training and education in the spring and summer of 1996, as most campaigns were starting to focus on tally.

Very truly yours,



Robert F. Bauer

MEE:mee

97043803749



RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

JAN 13 4 10 PM '97

In the Matter of

Democratic Senatorial Campaign  
Committee and Paul Johnson, as  
Treasurer, et. al.

)  
) MUR 3620, Conciliation  
) Agreement Inquiry  
) MUR 4490  
) MUR 4502

**SENSITIVE**

GENERAL COUNSEL'S REPORT

**I. BACKGROUND**

On September 27, 1996, the National Republican Senatorial Committee ("NRSC") filed an Emergency Motion for Civil Enforcement of the Conciliation Agreement, alleging that the Democratic Senatorial Campaign Committee ("DSCC") has knowingly and willfully violated the remedial provisions of the conciliation agreement in MUR 3620. At its October 1, 1996, Executive Session, the Federal Election Commission ("Commission") decided to forward the NRSC's motion to the DSCC and to wait for a response from the DSCC before determining how to proceed in this matter. The Commission received the DSCC's Memorandum in Opposition to the National Republican Senatorial Committee's Motion for Civil Enforcement on October 17, 1996.

Because there was insufficient information to verify whether the DSCC had fully complied with the conciliation agreement, the Commission, on October 29, 1996, opened an inquiry in MUR 3620 and approved a Subpoena for the Production Documents and answers to Interrogatories to the DSCC. The DSCC responded to the subpoena and order on December 13, 1996. Attachment 1. The DSCC also responded to follow-up questions on January 24, 1997. Attachment 2.

97043803750

At issue in MUR 3620 was whether certain contributions made to the DSCC and tallied to the DSCC accounts of various Democratic Senate candidates during the 1991-92 and 1993-94 election cycles were actually earmarked to those candidates. On August 15, 1995, the Commission accepted a signed conciliation agreement from the Democratic Senatorial Campaign Committee and Donald J. Foley, as treasurer, and took no further action against the candidates. Besides requiring the payment of a \$75,000 civil penalty, which the DSCC paid, the conciliation agreement required the following remedial action, which was to occur within 30 days after the agreement became effective:

a. For contributions to the DSCC that appear to be earmarked, the DSCC will refund the contributions or forward the contributions to the designated candidate, in accordance with 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 102.8, 110.6(b)(2)(iii), and 110.6(c)(1).

b. On an on-going basis, the DSCC will provide additional education and training to DSCC staff and participants in the tally program, including the staff of Democratic senate candidates, which will emphasize that: (1) DSCC does not accept contributions earmarked for a particular candidate; (2) tallied contributions will be spent for DSCC activities and programs as the Committee determines within its sole discretion; and (3) contributors must be advised of (1) and (2) above when the DSCC and tally program participants solicit tallied contributions.

c. The DSCC will utilize standard language in its solicitations pertaining to the tally program and, as part of its education and training, will instruct its tally participants to include this language in solicitations distributed by such candidates, their committees and their agents. This language will provide, in substance, that the DSCC does not accept contributions earmarked for a particular candidate and that tallied contributions will be used as the DSCC determines in its sole discretion. At a minimum, the language will state that: "The DSCC does not accept contributions earmarked for a particular candidate. Contributions tallied for a particular candidate will be spent for DSCC activities and programs as the Committee determines within its sole discretion."

d. The DSCC will implement reasonable procedures to review DSCC and Democratic Senate candidate fundraising solicitations pertaining to the tally program to ensure that the solicitations cannot be reasonably read to solicit

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earmarked contributions, in accordance with the requirements of Section VI(2)(b)-(c) of this agreement.

Conciliation Agreement at Section VI, Paragraph 2.

After filing its Emergency Motion regarding the conciliation agreement in MUR 3620 on October 1, 1996, the NRSC filed a complaint on similar grounds, designated as MUR 4490, which named the DSCC, most Democratic Senate candidates running for election in 1996, and certain unnamed contributors. The basis of the complaint was that these respondents had violated the conciliation agreement, as well as the earmarking and excessive contribution provisions of the Federal Election Campaign Act of 1971, as amended, ("Act" or "FECA") through the 1996 operation and participation in the DSCC's tally program. On October 8, 1996, the NRSC filed an additional complaint, MUR 4502, on the same basis which added an additional Democratic Senate candidate as a respondent. All of these respondents were notified of the complaint, and most responded. The main response of the DSCC and a Motion to Dismiss was received on November 29, 1996, and it was similar in content to the DSCC's response to the emergency motion.

For the reasons given below, this Office recommends that the Commission close the inquiry into the conciliation agreement in MUR 3620 and close the files in MUR 4490 and MUR 4502.

## II. ANALYSIS -- MUR 3620, CONCILIATION AGREEMENT INQUIRY

The response to the interrogatories sent in the MUR 3620 conciliation agreement inquiry is consistent with the DSCC's response to the NRSC's Emergency Motion, except that the answers are sworn under the penalty of perjury. The DSCC contends that

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it fully complied with the four remedial provisions required by the August of 1995 conciliation agreement, and it did so in a timely manner. After examining the response, it appears that the DSCC did substantially implement the four requirements of the conciliation agreement. However, because there are a few outstanding concerns suggesting that the DSCC needs to make additional efforts to ensure total compliance with the spirit as well as the letter of the agreement, this Office recommends sending a cautionary letter notifying the DSCC that it should amend its procedures to strengthen its compliance.

**A. Treatment of Earmarked Contributions.**

As required by the conciliation agreement, the DSCC must refund to contributors contributions that appear to be earmarked or forward them to the designated candidate pursuant to the requirements of the FECA, and the DSCC appears to have implemented this requirement. Conciliation Agreement at Section VI, Paragraph 2(a). As discussed in the DSCC's response to the Emergency Motion and reiterated in its answers to the interrogatories, the DSCC has adopted a policy that if a contribution appears to bear any indicia of earmarking it will be returned to the contributor. Attachment 1 at 3-4. These indicia include such items as memo line notes bearing the name of a candidate, and the phrases "tally to \_\_\_\_" or "for \_\_\_\_." According to the DSCC, its only exception to this policy is if the contribution is accompanied by a letter or response card indicating that the contributor understands the tally program.

This policy was explained to DSCC staff and the staff of candidates orally and in memoranda. *Id.* at 4, 15 and 17. In addition, particular checks were reviewed by DSCC

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counsel to determine whether they complied with the requirements of the conciliation agreement. This refund policy for earmarked contributions demonstrates that the DSCC complied with the remedial earmarking provision of the conciliation agreement.

Conciliation Agreement Section VI, Paragraph 2(a).

**B. Education and Training**

Pursuant to Section VI, Paragraph 2(b) of the conciliation agreement, the DSCC was obligated to provide additional education and training to DSCC staff and tally participants about the new requirements of the tally program, and the DSCC appears to have implemented this requirement. According to the DSCC, training to implement the remedial provisions was conducted primarily by its outside lawyers Robert F. Bauer and Mark E. Elias. Training included in-person group seminars, pre-scheduled conference calls, and individual consultations with DSCC staff, candidates, Senate campaign staff, and fundraisers to answer questions and to provide instructions on the tally program and the conciliation agreement. *Id.* at 5. Memoranda distributed to DSCC staff and candidate staff after April of 1996 instructed participants on the requirements of the tally program with regard to earmarking and twice stated that "the DSCC does not accept earmarked contributions and that tallied contributions are spent for DSCC activities and programs as the Committee determines within its sole discretion." *Id.* at 15-18. Although all Democratic Senate campaigns received the memoranda, the DSCC cannot state that all campaigns received training and education beyond the memoranda. *Id.* at 6-7.

Unlike in prior tally cycles, tally participants were informed that:



the tally program does not include earmarking and that the DSCC does not accept earmarked contributions. They were also told that checks that bore an indicia of earmarking would be returned. They were also instructed that campaigns and fundraisers should take steps to ensure that the contributors understood the tally program. The DSCC also instructed its fundraising staff that it had to include the agreed upon disclaimer language in all tally solicitations, and campaigns were strongly encouraged to do the same. Finally, the education and training advised that candidates should, when possible, have the DSCC review tally fundraising solicitations to ensure compliance with the MUR 3620 conciliation agreement.

*Id.* at 8.

According to the DSCC response, required education and training about the tally program began in September of 1995 and continues in the present. Because the memoranda containing tally instructions were printed on April 29, 1996, this Office requested supplemental information on education and training that occurred in 1995. Counsel noted that it was hard to reconstruct at this point exactly what training had taken place in 1995 to implement the conciliation agreement, and that the tally fundraising program is not very active in odd-numbered years. Nonetheless, according to the DSCC, its counsel met with the DSCC's Executive Director in August of 1995 to educate him about the requirements of the conciliation agreement and implementation of those requirements. From August through December of 1995, counsel began briefing DSCC staff and candidates on the changes in the tally program. In September of 1995, counsel met with DSCC senior staff to formulate new policies and procedures to operate the tally program and began educating DSCC administrative and fundraising personnel about the tally program revisions. By October of 1995, DSCC documents describing the tally program had been revised to include the new disclaimer language. In November of 1995,

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counsel held a formal in-person training session for the entire DSCC fundraising staff about the new tally program requirements. Attachment 2.

Based on this information, it appears that the DSCC did conduct education and training with the DSCC and candidates on the requirements of the conciliation agreement. Although a major portion of the training consisted of the distribution of the April 29, 1996 memoranda, counsel for the DSCC also held seminars and individual consultations to discuss the requirements. This education and training appears sufficient to satisfy the requirement of the conciliation agreement. Nonetheless, based on the information provided by the NRSC in its Emergency Motion, it appears that although campaign and finance staff for Democratic candidates were aware of the requirements imposed by the conciliation agreement, some of the candidates themselves made statements suggesting that they believed tallied contributions would directly help them. See discussion of statements made by Candidates Durbin and Morales, General Counsel's Report (October 24, 1996) at 6 and 7.<sup>1</sup> As discussed below, while this Office believes that the education and training generally were adequate and did not violate the letter of the conciliation agreement, the DSCC needs to improve them and make a greater effort to directly explain the requirements of the tally program and the conciliation agreement to the candidates.

<sup>1</sup> For example, according to an Associated Press article, Congressman Durbin reportedly stated: "The only way the Democratic Senatorial Campaign Committee money goes to me is if I raise the money and it is tallied to me." When asked about his campaign finances, Mr. Morales allegedly said in a campaign interview submitted by the NRSC: "I think we have about a little over \$200, almost \$300,000. And then there's some tally money of about \$150,000. Tally money that, you know, people have tallied in my name to the DSCC."

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### C. Disclaimer Language

In the conciliation agreement, the DSCC agreed to utilize standard disclaimer language in its own solicitations pertaining to the tally program and to "instruct" tally participants to include the language in solicitations distributed by candidates, their committees, and their agents. Conciliation Agreement Section VI, Paragraph 2(c). The DSCC appears to have substantially implemented this requirement. In its response to the interrogatories, the DSCC states that it has "encouraged" candidates to include the disclaimer language in their solicitations, and the April 29, 1996 memoranda to 1996 Democratic Senate Candidates states that: "All written tally solicitations should include the following language: [The Disclaimer]. This language should be included as its own paragraph or a part of another and should be included in its entirety." *Id.* at 10 and 18 (emphasis in original).

It is clear that the DSCC utilized the agreed upon disclaimer language in solicitations distributed directly by the DSCC. This Office has reviewed a number of DSCC solicitations included in the NRSC's Emergency Motion, the DSCC's response to that motions, and the DSCC's answers to interrogatories, and all of these solicitations have included the agreed upon interrogatory language. Based on the memoranda and the responses to the interrogatories, the DSCC did stress to its candidates that they were to use the disclaimer language, and there is no indication that those candidates failed to use the disclaimer in solicitations, following distribution of the memoranda in April of 1996.<sup>2</sup>

<sup>2</sup> As discussed in the previous General Counsel's Report, Senator Levin's solicitations to the Chrysler Corporation Nonpartisan PAC (dated October 9, 1995) and to the National Structured Settlements PAC (dated December 29, 1995) failed to include the disclaimer. Nonetheless, these solicitations were distributed prior to the memoranda and



However, in response to the interrogatories, the DSCC informed the Commission that it only "encouraged" its candidates to include the disclaimer language, and encouragement is far less emphasis than the instruction required by the conciliation agreement.

Accordingly, as discussed in this Office's recommendation to send a cautionary letter to the DSCC, the DSCC needs to do more than encourage candidates to use disclaimer language.

#### **D. Review Procedures**

Pursuant to Section VI Paragraph 2(d) of the conciliation agreement, the DSCC was obligated to implement reasonable procedures to review DSCC and Democratic Senate candidate fundraising solicitations pertaining to the tally program to ensure that the solicitations cannot be reasonably read to solicit earmarked contributions. Based on information received from the DSCC, the DSCC needs to do more to implement reasonable procedures to review tally solicitations produced by the candidates. According to the response, the DSCC communicated this "procedure" to DSCC staff and Democratic Senate candidates through formal training, written memoranda, and informal telephone consultation. The DSCC notes that it educated its staff and obviously reviewed its own solicitations, because all contain the required disclaimer.

The DSCC's memorandum to its fundraising staff states that "The DSCC should review candidate tally fundraising solicitations, when possible, to make sure they comply with the requirements set forth above." *Id.* at 16 (emphasis added). The memorandum to

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relatively soon after the effective date of the conciliation agreement. While the DSCC itself is specifically required to include the disclaimer language in its own solicitations, it is only obligated to "instruct" candidates to include the specific language.

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1996 Democratic Senate Candidates states that "Candidates are encouraged, when possible, to have the DSCC review tally fundraising solicitations." *Id.* at 18 (emphasis added). The language in the April 29, 1996 memoranda that the DSCC "should review candidate tally solicitations, when possible" is weak, and candidates have no positive or negative incentive to have their tally solicitations reviewed by the DSCC.

When asked to provide copies of all tally solicitations reviewed by the DSCC as part of these procedures, the DSCC responded: "The DSCC does not routinely maintain non-DSCC tally solicitations. All solicitations as well as those in the possession of the DSCC from candidate campaigns are attached." *Id.* at 12. The DSCC further states that it "is unaware of how many, if any, solicitations pertaining to the tally program since September 1, 1995 were not reviewed by the DSCC." *Id.* at 12. Nonetheless, the only candidate solicitation included with the response to the interrogatories which appears to have been reviewed and edited by the DSCC was for an October 12, 1996 Durbin campaign fundraiser. This was edited and changed substantially by the DSCC on October 9, 1996, after the DSCC received notification of the emergency motion on October 2, 1996. *Id.* at 41-44. The DSCC's use of the October, 1996, Durbin material as its only example of compliance with the review requirement raises the possibility that no other tally solicitations produced by Democratic Senate candidates were reviewed before the filing of the motion.

#### **E. Conclusion**

Based on the information included in the responses, it appears that the DSCC has, in most respects, adhered to the technical terms of the conciliation agreement. However,

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the evidence also shows that the DSCC needs to strengthen certain of its efforts in order to ensure that the steps the DSCC has taken achieve the intended purpose of the requirements in the agreement. Since it appears that there has been general compliance with the conciliation agreement, however, this Office recommends that the Commission take no further action at this time and terminate its inquiry into this matter. This Office also recommends that the Commission send a cautionary letter advising the DSCC of areas in which the organization needs to make further efforts to comply with the letter and spirit of the conciliation agreement.

The proposed letter to the DSCC states in part that the Commission will take no further action in this matter at this time, but it advises the DSCC to take steps to ensure that its operation of the tally program is modified to improve its efforts in three areas. First, it appears that some of the 1996 Democratic Senate candidates, as opposed to campaign staff, remain unaware of certain of the remedial provisions of the 1995 conciliation agreement and are still not describing the tally program accurately, calling into question the effectiveness of some of the DSCC's educational efforts. Second, the DSCC needs to "instruct" Democratic Senate Candidates to include the disclaimer in their solicitations, as opposed to merely "encourage" them. Finally, the DSCC should use stronger language with candidates to implement review procedure, because candidates currently are only "encouraged, when possible to have the DSCC review tally fundraising solicitations." Attachment 3.

A second letter advises informs the NRSC that the Commission has admonished the DSCC and will take no further action in this matter at this time. Attachment 4.

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Accordingly, this Office recommends that the Commission take no further action in the conciliation agreement inquiry in MUR 3620, approve the attached letters, close the conciliation agreement inquiry in MUR 3620, and close the file.

### III. ANALYSIS in MUR 4490 AND MUR 4502

In MUR 4490 and MUR 4502, the NRSC filed complaints alleging that the DSCC, most Democratic Senate candidates during the 1996 election cycle, and various unnamed contributors had violated and were continuing to violate the 1995 conciliation agreement in MUR 3620, as well as the FECA's earmarking and excessive contribution provisions. In short, the NRSC alleges that many contributors who had "maxed" out in direct contributions to Democratic Senate candidates violated the excessive contribution prohibition by earmarking additional contributions to those candidates through the tally program. Democratic Senate candidates allegedly solicited earmarked contributions, failed to correctly report as earmarked contributions 441a(d) coordinated party funds derived from tallied contributions, and accepted excessive contributions from those contributors who had already maxed out to their campaigns. The DSCC is alleged to have solicited earmarked contributions and failed to report the receipt of earmarked contributions or forward them to the appropriate candidate.

The conclusion reached above regarding the inquiry in MUR 3620 has a derivative impact on the complaints filed in MUR 4490 and MUR 4502. The NRSC alleged that all of the new respondents named in those complaints had violated the conciliation agreement in MUR 3620. Because the DSCC was the only respondent who signed that agreement and the agreement does not require any remedial action from the

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Democratic Senate candidates or potential contributors, neither the candidates nor the contributors could have violated the conciliation agreement. As described above, this Office concluded that the DSCC did generally comply with the conciliation agreement.

The results of the inquiry into the conciliation agreement in MUR 3620 have another impact on the complaints in MUR 4490 and MUR 4502. Based on sworn statements provided by the DSCC during the inquiry and the absence of any information to the contrary, this Office concluded that there is no evidence that the DSCC did not appropriately treat earmarked contributions received in the 1996 cycle by returning such contributions to the contributors. The allegation of earmarked contributions at issue in the MUR 3620 inquiry pertained to the identical contributions received in MUR 4490 and MUR 4502. Having concluded that there is no evidence that the DSCC did not appropriately treat earmarked contributions by returning them (and thus the DSCC was not required to follow the regulations at 11 C.F.R. § 110.6), this Office concludes there is no evidence that the DSCC accepted earmarked tallied contributions or pass earmarked contributions on to the Democratic Senate candidates in the form of coordinated party expenditures. Based on this conclusion, there is no evidence that the Democratic Senate candidates received earmarked contributions that they failed to report.

Because the NRSC also alleged that the contributors made and the candidates accepted excessive contributions through contributions to the DSCC tally program, an analysis of 11 C.F.R. § 110.1(h) is pertinent to this issue. That provision states that a person may contribute to a candidate or his or her authorized committee, with respect to a particular election, and also contribute to a political committee which has supported, or

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anticipates supporting the same candidate in the same election, if three requirements are met. First, the political committee is not the candidate's principal campaign committee or other authorized political committee or a single candidate committee. Second, the contributor does not give with the knowledge that a substantial portion will be contributed to, or expended on behalf of, that candidate for the same election; and third, the contributor does not retain control over the funds. 11 C.F.R. § 110.1(h).

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This provision means that a contributor can max out to a Democratic Senate candidate, and give to the DSCC through the DSCC's tally programs (a political committee which is not the candidate's principal campaign committee or other authorized political committee or a single candidate committee), as long as the contributor does not have knowledge that a substantial portion of the contribution will be expended on behalf of the candidate. Because the amount of funds tallied for a Democratic Senate candidate is only one of the factors used by the DSCC in making its allocation determinations, the contributor cannot have the knowledge that a substantial portion of the contribution will be expended on behalf of the candidate. There has never been any allegation that any contributor has retained control over tallied contributions, so the provisions of 11 C.F.R. § 110.1(h) are, met and the contribution is not considered an excessive contribution made by the contributor and accepted by the Democratic Senate candidate or the DSCC.

MUR 4490 and MUR 4502 remain in the Central Enforcement Docket and have not been activated. The Commission recently expended significant resources in analyzing the DSCC's and various Democratic Senate candidates' tally activities during

the 1992 and 1994 election cycles in MUR 3620, concluding with the conciliation signed in August of 1995. This Office subsequently has investigated the 1996 Tally Program in connection with the inquiry into compliance with the conciliation agreement in MUR 3620.

Based on the information contained in this report, this Office believes that the Commission should exercise its prosecutorial discretion and not expend additional resources on these matters. This Office would notify the NRSC and all of the respondents of the Commission's actions through standard letters. Attachments 5 and 6. Accordingly, this Office recommends that the Commission take no action in MUR 4490 and MUR 4502, approve the attached letters, and close the files.

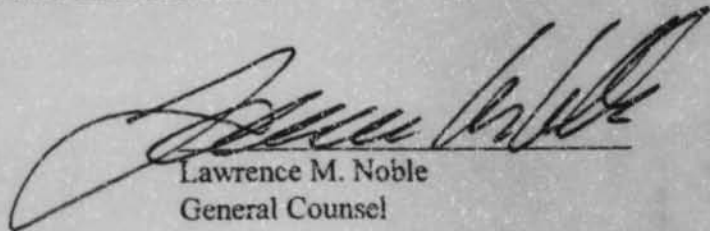
#### IV. RECOMMENDATIONS

1. Take no further action in the conciliation agreement inquiry in MUR 3620.
2. Approve the attached letters in the conciliation agreement inquiry in MUR 3620.
3. Close the conciliation agreement inquiry in MUR 3620 and close the file.
4. Take no action in MUR 4490 and MUR 4502.
5. Approve the attached letters in MUR 4490 and MUR 4502.
6. Close the files in MUR 4490 and MUR 4502.

Date

3/13/97

Lawrence M. Noble  
General Counsel



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## Attachments:

1. DSCC Response to Interrogatories
2. DSCC Supplemental Response
3. MUR 3620 Letter to the DSCC
4. MUR 3620 Letter to the NRSC
5. MUR 4490 and MUR 4502 Letter to the NRSC
6. MUR 4490 and MUR 4502 Letter to Respondents

Attorney assigned: Stephan O. Kline


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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE  
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE ROSS   
COMMISSION SECRETARY

DATE: MARCH 18, 1997

SUBJECT: MURs 3620, 4490, and 4502 - General Counsel's Report

The above-captioned document was circulated to the Commission  
on Friday, March 14, 1997.

Objection(s) have been received from the Commissioner(s) as  
indicated by the name(s) checked below:

Commissioner Aikens	—
Commissioner Elliott	XXX
Commissioner McDonald	—
Commissioner McGarry	—
Commissioner Thomas	XXX

This matter will be placed on the meeting agenda for

Tuesday, March 25, 1997.

Please notify us who will represent your Division before the Commission on this matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) MUR 3620 Conciliation  
Democratic Senatorial Campaign ) Agreement Inquiry  
Committee and Paul Johnson, as ) MUR 4490  
Treasurer, et al. ) MUR 4502

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on March 25, 1997, do hereby certify that the Commission decided by a vote of 4-1 to take the following actions with respect to the above-captioned matters:

1. Take no further action in the conciliation agreement inquiry in MUR 3620.
2. Approve the letters in the conciliation agreement inquiry in MUR 3620 as recommended in the General Counsel's March 13, 1997 report.
3. Close the conciliation agreement inquiry in MUR 3620 and close the file.
4. Take no action in MUR 4490 and MUR 4502.
5. Approve the letters in MUR 4490 and MUR 4502 as recommended in the General Counsel's March 13, 1997 report.

(continued)

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Federal Election Commission  
Certification: MURS 3620, 4490,  
and 4502  
March 25, 1997

Page 2

6. Close the files in MUR 4490 and MUR 4502.

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

Attest:

3-25-97  
Date

Marjorie W. Eumons  
Marjorie W. Eumons  
Secretary of the Commission

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

April 14, 1997

Benjamin L. Ginsberg, Esq.  
Patton Boggs, L.L.P.  
2550 M Street, N.W.  
Washington, D.C. 20037-1350

RE: MUR 3620

Dear Mr. Ginsberg:

On March 25, 1997, the Federal Election Commission reviewed the allegations contained in the National Republican Senatorial Committee's ("NRSC") Emergency Motion for Civil Enforcement of the Conciliation Agreement in the captioned matter, the Democratic Senatorial Campaign Committee and Paul Johnson, as treasurer's, ("DSCC") Memorandum in Opposition to the NRSC's Motion, and the DSCC's response to certain interrogatories issued by the Commission.

Underlying the need for the remedial requirements in the August 1995, conciliation agreement was the belief that participants in the tally program did not understand how the tally program differed from earmarking. While the DSCC has technically complied with the conciliation agreement, it needs to do more to clarify this distinction and carry out the terms of the conciliation agreement. Accordingly, the Commission sent the DSCC a cautionary letter and advised the DSCC to take steps to ensure that its operation of the tally program is modified. Simultaneously, the Commission determined to take no further action in this matter at this time and closed its in this inquiry.

If you have any questions, please contact Stephan Kline, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lawrence M. Noble".

Lawrence M. Noble  
General Counsel

Enclosure  
General Counsel's Report

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

April 14, 1997

Robert F. Bauer, Esq.  
Perkins Coie  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2011

Re: MUR 3620  
Democratic Senatorial Campaign  
Committee and Paul Johnson, as treasurer

Dear Mr. Bauer:

On March 25, 1997, the Federal Election Commission reviewed the allegations contained in the National Republican Senatorial Committee's ("NRSC") Emergency Motion for Civil Enforcement of the Conciliation Agreement in MUR 3620, the Democratic Senatorial Campaign Committee and Paul Johnson, as treasurer's, ("DSCC") Memorandum in Opposition to the NRSC's Motion, and the DSCC's response to certain interrogatories issued by the Commission. After considering the circumstances, the Commission determined to take no further action in MUR 3620 at this time and closed its inquiry.

Underlying the need for the remedial requirements in the August 1995, conciliation agreement was the belief that participants in the tally program did not understand how the tally program differed from earmarking. While the DSCC has technically complied with the conciliation agreement, it needs to do more to clarify this distinction and carry out the terms of the conciliation agreement.

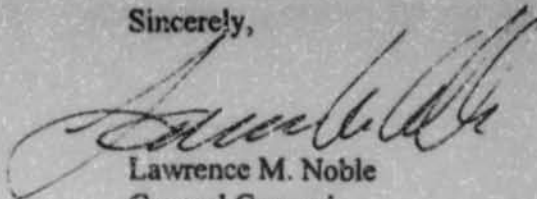
Accordingly, the Commission advises the DSCC to take steps to ensure that its operation of the tally program is modified to improve its efforts in three areas. First, based on press reports, it appears that some of the 1996 Democratic Senate candidates, as opposed to campaign staff, remain unaware of certain of the remedial provisions of the 1995 conciliation agreement. These candidates are still not describing the tally program accurately, calling into question the effectiveness of some of the DSCC's educational efforts. Second, the DSCC has only "encouraged" Democratic Senate candidates to include disclaimer language in their tally solicitations, and the conciliation agreement required the DSCC to "instruct" participants to include this language. Third, the DSCC should use stronger language with candidates to implement review procedure, because candidates currently are only "encouraged, when possible to have the DSCC review tally fundraising solicitations."

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Mr. Bauer  
Page 2

If you have any questions, please contact Stephan Kline, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,



Lawrence M. Noble  
General Counsel

Enclosure  
General Counsel's Report

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THIS IS THE END OF MUR # 3620

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